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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: I

DATE: TUESDAY, MAY 10, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member

FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St.
Thunder Bay, Ontario, on Tuesday,
May 10th, 1988, commencing
at 10:00 a.m.

VOLUME I

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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A P P E A R A N C E S

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MR. P.R. CASSIDY)	ASSOCIATION
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MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
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MR. B. MCKERCHER)	OUTFITTERS ASSOCIATION
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APPEARANCES: (Cont'd)

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MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	PRODUCTS
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
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MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
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MR. P.D. MCCUTCHEON	GEORGE NIXON

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

EXHIBIT NO.	DESCRIPTION	PAGE NO.
1	Memorandum to the Chairman of the Environmental Movement dated October 19, 1987.	1
2	Memorandum to the Chairman of the Environmental Movement dated March 21, 1988.	2
3	Memorandum to the Chairman of the Environmental Movement dated February 8, 1989.	3
4	Memorandum to the Chairman of the Environmental Movement dated February 8, 1989.	4
5	Memorandum to the Chairman of the Environmental Movement dated February 22, 1989.	5
6	Memorandum from the Chairman of the Environmental Movement dated May 2, 1989.	6
7	Affidavit of service of process to the Ontario (OCA) dated March 2, 1989.	7
8	Affidavit of service of process to the Ontario (OCA) dated May 10, 1989.	8
9	Letter dated May 3, 1989 from the Ontario (OCA) dated May 3, 1989.	9

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1	Referral by the Minister of the Environment dated October 14, 1987.	3
2	Memorandum signed by the Chairman of the Environmental Assessment Board dated January 21, 1988.	4
2A	Memorandum filed by R.B. Eisen dated February 8, 1988.	4
2B	Memorandum by the Chairman of the Environmental Assessment Board dated February 8, 1988.	4
2C	Memorandum to the Chairman of the Environmental Assessment Board from Dr. Paul Eagles dated February 22, 1988.	5
2D	Memorandum from the Chairman of the Environmental Assessment Board dated May 3, 1988.	5
3A	Affidavit of service of Karen Dusome (MOE) dated March 8, 1988.	6
3B	Affidavit of service sworn by Tracy Tieman (MOE) dated May 10, 1988.	7
3C	Letter dated May 5, 1988 from McKim Advertising to Jeff. Standard (MNR).	8

I N D E X O F E X H I B I T S

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5	Government Review and supporting documentation.	140

1 ---Upon commencing at 10:00 a.m.

2 THE CHAIRMAN: Thank you, ladies and
3 gentlemen. Please be seated.

4 Can everybody hear okay?

5 Well, good morning, ladies and gentlemen,
6 and welcome to the commencement of what has been known
7 as the Timber Management Class Environmental Assessment
8 Hearing.

9 As many of you are aware from
10 participating in the preliminary meetings, this
11 hearing, which is commencing today, will continue for
12 some time at both this location and a series of other
13 locations across the province.

14 We are beginning what will be a lengthy
15 process under the Environmental Assessment Act and I
16 want to indicate at the outset that the Board is going
17 to endeavor to make sure that we adopt procedures which
18 are going to expedite and, in a most efficient manner,
19 facilitate the presentation of the evidence so that we
20 are able to complete this hearing in a time period
21 which is not totally out of control in terms of the
22 documentation and voluminous amount of evidence that I
23 suspect is going to be presented to this panel.

24 Now, before we get into the hearing there
25 are a number of housekeeping matters I want to take

1 care of and a number of other preliminary procedural
2 matters that have to be dealt with as well.

3 Firstly, I would like to introduce to you
4 this Hearing Panel. To my right is Mrs. Anne Koven who
5 is a member of the Board and a member of this panel, to
6 my left is Mr. Elie Martel who is a vice-chairman of
7 the Board and a member of the panel, and my name is
8 Michael Jeffery, I am Chairman of the Environmental
9 Assessment Board and will chair this hearing.

10 At the outset, I am just for the purposes
11 of the record going to indicate the subject matter of
12 the hearing which was commenced by a referral from the
13 Minister of the Environment and it is: In the Matter
14 of a Notice by the Honorable Jim Bradley, Minister of
15 the Environment requiring the Environmental Assessment
16 Board to hold a hearing with respect to a Class
17 Environmental Assessment of an undertaking by the
18 Ministry of Natural Resources for the activity of
19 Timber Management on Crown Lands in Ontario.

20 And this hearing will be conducted
21 pursuant to the provisions of the Environmental
22 Assessment Act.

23 Now, ladies and gentlemen, the referral
24 from the Minister is dated the 14th day of October,
25 1987, it is addressed to the Environmental Assessment

1 Board and it states as follows:

2 "Having received a request from the
3 Minister of Natural Resources for a
4 hearing by the Environmental Assessment
5 Board with respect to the above-mentioned
6 undertaking, the undersigned, pursuant to
7 Section 12(2) of the Act hereby requires
8 the Board to hold a hearing with respect
9 to:

- 10 (a) the acceptance of the
11 environmental assessment; and,
12 (b) the approval to proceed with the
13 undertaking."

14 This referral will be marked Exhibit 1 to these
15 proceedings.

16 ---EXHIBIT NO. 1: Referral by the Minister of the
17 Environment, dated October 14, 1987.

18 THE CHAIRMAN: Now, ladies and gentlemen,
19 with respect to the composition of the panel, I am
20 going to mark as an exhibit a memorandum dated January
21 21st, 1988 signed by myself, as Chairman of the
22 Environmental Assessment Board, authorizing myself to
23 chair this hearing; Mr. R. B. Eisen to be a member of
24 the Board and Mrs. Anne Koven to be the third member.

25 That will be Exhibit No. 2.

1 ---EXHIBIT NO. 2: Memorandum signed by the Chairman
2 of the Environmental Assessment
 Board, dated January 21, 1988.

3 THE CHAIRMAN: As some of you are aware,
4 Mr. Eisen was required to take himself off this panel
5 due to a medical condition which he had and was
6 aggravated essentially by some of the extreme cold
7 weather that we had during one of the preliminary
8 meetings and there is a memorandum from himself dated
9 February 8th, 1988.

10 I am going to have this filed as Exhibit
11 2A.

12 ---EXHIBIT NO. 2A: Memorandum filed by Mr. R. B.
13 Eisen dated February 8, 1988.

14 THE CHAIRMAN: In view of the fact that
15 Mr. Eisen was forced to withdraw from the hearing
16 panel, he was replaced by Dr. Paul Eagles, a part-time
17 member of the Board, and this was evidenced by my
18 memorandum dated February 8th, 1988 which will be filed
19 as Exhibit 2B.

20 ---EXHIBIT NO. 2B: Memorandum by the Chairman of the
21 Environmental Assessment Board,
 dated February 8, 1988.

22 THE CHAIRMAN: Again, as some of you will
23 recall, there was a question that arose at one of the
24 preliminary meetings because of a past affiliation of
25 Dr. Eagles with one of the parties before the Board

1 and, accordingly, he withdrew from the panel effective
2 February 22nd, 1988.

3 And, again, there is a memorandum from
4 Dr. Eagles to myself as Chairman of the Board where he
5 withdrew from the panel. That will be Exhibit 2C.

6 ---EXHIBIT NO. 2C: Memorandum to the Chairman of the
7 Environmental Assessment Board
8 from Dr. Paul Eagles dated
February 22, 1988.

9 THE CHAIRMAN: And, lastly, there is a
10 further memorandum from myself dated May 3rd, 1988
11 wherein I appointed Mr. Eli Martel to take Dr. Eagles'
12 place.

13 And a copy of that memorandum will be
14 filed as Exhibit 2D.

15 ---EXHIBIT NO. 2D: Memorandum from the Chairman of
16 the Environmental Assessment
Board, dated May 3, 1988.

17 THE CHAIRMAN: And, therefore, that is
18 the background documentation which supports the
19 constitution of the panel that is presently before you
20 on this application.

21 Now, ladies and gentlemen, the next
22 matter to be exhibited are the affidavits of service
23 with respect to the notice for this hearing and I have
24 before me an affidavit of service sworn by Karen
25 Dusome, a staff member of the Environmental Assessment

1 Board, indicating that she did on March 8th, 1988 send
2 notice of public hearing as attached to this affidavit
3 to the persons at the addresses shown on Exhibit B to
4 this affidavit.

5 And she also sent directions for notice
6 to the solicitors for the proponent, the Ministry of
7 Natural Resources, instructing them to serve the notice
8 on additional people, and by way of publication, and
9 that notice of directions is attached hereto to this
10 affidavit as Exhibit C.

11 I would like to exhibit this affidavit of
12 service to these proceedings as Exhibit 3A.

13 ---EXHIBIT NO. 3A: Affidavit of service of Karen
14 Dusome, MOE, dated March 8, 1988.

15 THE CHAIRMAN: Now, I would like also to
16 call on the solicitor for the Ministry, if you have an
17 affidavit of service to complete this.

18 MR. FREIDIN: Yes, Mr. Chairman. I am
19 advised that there are some tear sheets which go along
20 with this affidavit of service. I can withhold filing
21 it now, or I could file it now and provide you with the
22 tear sheets later.

23 THE CHAIRMAN: All right. Why don't you
24 do it in the latter fashion. If you would give us the
25 affidavit of service at the moment and then we will

1 have the tear sheets attached to it at a later date,
2 just so that we can give it a number at this time.

3 MR. FREIDIN: All right. And the
4 affidavit of service is an affidavit sworn by Tracy
5 Tieman, T-i-e-m-a-n, dated May the 10th, 1988.

6 THE CHAIRMAN: Thank you.

7 Ladies and gentlemen, these affidavits of
8 service and all the other affidavits will be available
9 for any of you to inspect at your leisure.

10 At this time we will exhibit this
11 affidavit of service as Exhibit 3B.

12 ---EXHIBIT NO. 3B: Affidavit of service sworn by
13 Tracy Tieman, MOE, dated May 10,
1988.

14 MR. FREIDIN: Mr. Chairman, I have a
15 further document. One of the newspapers which the
16 Ministry was instructed to publish notice in was on
17 strike and, as a result, they were unable to comply
18 with that portion of your letter.

19 I have a letter which in fact confirms
20 that there was a strike and we were unable to publish,
21 and they are still on strike, I understand.

22 THE CHAIRMAN: And I take it you never
23 published it in that paper?

24 MR. FREIDIN: That is correct, Mr.
25 Chairman.

1 THE CHAIRMAN: Very well, Exhibit 3C. We
2 will exhibit a letter dated May 5th, 1988 which is a
3 letter from McKim Advertising to Mr. Jeff Standard of
4 the Ministry of Natural Resources, Communications
5 Branch, indicating that there was a strike at the
6 Ottawa LeDroit Newspaper and, therefore, the
7 advertisement which was scheduled to be inserted March
8 30th, 1988 could not be inserted on that date and
9 indicating - and the letter is dated May 5th - that the
10 strike is still in effect.

11 That will be Exhibit 3C I believe.

12 ---EXHIBIT NO. 3C: Letter dated May 5, 1988 from
13 McKim Advertising to Jeff
Standard, MNR.

14 MR. FREIDIN: And, Mr. Chairman,
15 perhaps Ms. Blastorah could also advise the Board of a
16 difficulty which arose in relation to publishing the
17 notice in one of the native newspapers which was
18 included in the order.

19 MS. BLASTORAH: Mr. Chairman, the Timmins
20 Freighter was to have a publication both in Cree and in
21 English. The English version was published in
22 accordance with the directions of the Board.

23 Unfortunately, there was some difficulty
24 with the Cree translation and it was not received by
25 the paper until just recently. I understand that they

1 do now have it.

2 Consequently, it was not published in
3 Cree as a result of that translation problem. They
4 have advised us that it will be published this week.

5 THE CHAIRMAN: Very well. Can you tell
6 the Board whether any notice was published in Cree in
7 any other newspaper?

8 MS. BLASTORAH: There was a notice
9 published in the Wawatang News. Again, there was a
10 slight translation problem -- well, a significant
11 translation problem. That notice was published in
12 English and a partial translation in Cree.

13 The tear sheets should be here in the
14 next few minutes and we can show you what exactly was
15 published.

16 The significant portions of the notice
17 indicating the nature of the undertaking, the time and
18 place of the hearing, and so on, were translated into
19 Cree in that publication.

20 THE CHAIRMAN: All right. Well, it is
21 obvious that I think we are going to run into these
22 difficulties from time to time throughout this hearing,
23 particularly on the translation side of it, and we are
24 going to have to cope as best we can.

25 We are certainly going to ensure that

1 everybody has a fair opportunity to participate.
2 Certainly the Ministry, under the circumstances, I
3 don't think could do anything other than utilize their
4 best efforts to have this translated in time and if it
5 cannot be done, then the Board will be required to
6 abridge some of its directions in that regard.

7 MS. BLASTORAH: And just for your
8 information, Mr. Chairman, the Wawatang News is going
9 to be publishing a full pre-notice in their June
10 edition. It is a monthly paper.

11 THE CHAIRMAN: Very well.

12 Now, ladies and gentlemen, that basically
13 completes some of the very preliminary filings that are
14 required to, in effect, get one of these complex
15 hearings off the ground.

16 Just before we go into some more
17 substantive issues and, once again, although it may
18 take up some time to identify all of the parties and
19 counsel for the parties, I want to just make some
20 preliminary statements with respect to these
21 proceedings in general.

22 Firstly, the Board is going to actively
23 encourage media coverage of this hearing. Because of
24 the vastness of the geographical area that this
25 undertaking covers, the Board feels it is most

1 essential that information about the proceedings, no
2 matter what location these proceedings are taking place
3 at the time, is disseminated to as many people as
4 possible.

5 We feel that anything that the media can
6 do in terms of keeping people abreast of what is
7 happening at the proceedings will be helpful to those
8 people who are unable to attend on a regular basis.

9 I think it would be within everybody's
10 knowledge to realize that many of the newspapers across
11 the north are not published on a daily basis, some of
12 them are on a weekly basis or twice a month and,
13 consequently, some of the news that gets out to some of
14 the other locations across the province will be
15 somewhat dated.

16 Therefore, if the media wishes to
17 televisе these proceedings on a regular basis, the
18 Board is going to permit that. The Board has made some
19 inquiries as to whether or not any of the public
20 broadcasting networks would wish to cover these
21 proceedings in Thunder Bay on a regular basis - and I
22 cannot say that we received a positive response to that
23 as of yet - but if there is an outlet that wishes to
24 cover the proceedings in that fashion, we are going to
25 try and structure a set of directions or rules which

1 will allow that to happen with as little disruption as
2 possible to the proceedings themselves.

3 We are going to allow the local media to
4 cover the proceedings either through television, radio,
5 or, of course, the print media. And we have set up at
6 the far lefthand corner of the room at the back a media
7 table where the media can sort of stay on a regular
8 basis.

9 It is next to the door, so we would ask
10 their cooperation, if you are going in and out,
11 particularly when evidence is being given, to be as
12 quiet as possible so as to disturb the actual
13 proceedings in the least possible way.

14 If any particular witness objects
15 strenuously to their testimony being televised, I would
16 ask counsel who calls that witness to advise the Board
17 in advance and we will certainly consider the
18 possibility of not allowing that particular testimony
19 to be televised if there appears to be a good reason
20 why it should not.

21 But there is a public interest involved
22 in this hearing and part of that public interest is in
23 having what goes on here understood and within the
24 knowledge of as many people as possible. And we think,
25 in this regard, the media can be of great assistance

1 and, therefore, we have decided to encourage media
2 coverage of this proceeding.

3 Now, the next issue, in a general way,
4 that I want to deal with is the presentation of the
5 evidence itself.

6 As many of you are aware, there is going
7 to be a great number of witnesses called for all of the
8 parties and the Board is going to try very hard - while
9 ensuring that the proceedings are at all times fair -
10 that there is not going to be repetition and that there
11 is not going to be undue delay caused by witnesses
12 testifying to issues or other things that there is a
13 better way of getting that evidence before the Board.

14 Now, in this regard, I would ask counsel
15 to seriously consider the following; and that is, it
16 will not be necessary for counsel, when calling an
17 expert witness, to run through that expert witness'
18 curriculum vitae line-by-line. What you should be
19 doing, and what we want you to do, is to file the C.V.
20 in advance with the Board and distribute it amongst the
21 other parties prior to calling the witness.

22 If there is any challenge that is going
23 to be raised by any party to that witness'
24 qualifications, then that can be dealt with when the
25 witness is called. If, as is the case in many

1 instances, there is no challenge; then, the counsel
2 introducing the witness should just be referring in the
3 clearest, most concise terms to that witness'
4 expertise; that means, not reading the C.V. but just
5 broadly covering the highlights in a very concise
6 manner and then the witness will be sworn and we will
7 get into his testimony.

8 We are going to avoid these lengthy
9 qualification exercises which believe me, through past
10 experience, can take up to an hour for each witness
11 when, in most cases, there is absolutely no challenge
12 by anybody, and we feel that that is an exercise that
13 may help in expediting this proceeding.

14 That is number one.

15 Number two: When calling witness panels
16 on various issues, you will note from the Board's
17 procedural directions that have already been issued,
18 that the Board is prepared to allow testimony to be
19 given by panels covering areas for which more than one
20 witness wishes to testify upon, but the Board is going
21 to discourage issues to be covered by more than one set
22 of witnesses, at least in the first instance.

23 What we are trying to say, I guess to get
24 it down to simple terms, is: We do not need issues
25 dealt with by three and four separate panels or five

1 and six separate witnesses just so that counsel wishes
2 to emphasise the points being drawn out when they are
3 essentially the same points.

4 The Board is quite capable of, I hope,
5 understanding what is put before us. We do not
6 necessarily need it drilled in five or six times?

7 And, as a consequence, we are going to
8 discourage that type of presentation unless, of course,
9 something comes out by way of cross-examination that
10 compels the parties to feel that, in the interests of
11 their client, they have to call further evidence. And,
12 if that is the case, then there can be a certain amount
13 of repetition, but the Board is going to deal with that
14 on a case-by-case basis.

15 So I do not know how that is going to
16 affect the structure of the presentation of your case
17 to date, but I think - and I guess I direct this to you
18 in the first instance - Mr. Freidin, since your case
19 will be going in essentially first, to take a look at
20 your witness panels and try and ascertain the issues
21 that they are going to be dealing with and that there
22 is not going to be a repetition by subsequent panels of
23 the evidence put in by the earlier panels.

24 We are going to insist upon this from all
25 the parties.

1 The next issue I would like to deal with,
2 in a general way, is the fact that notwithstanding that
3 we are not going to permit repetition of any of the
4 issues, there are probably some issues which the Board
5 should not have to deal with through the presentation
6 of oral evidence and I am going to really insist that
7 counsel use their best efforts to try and ascertain
8 what issues there are regarding this case that can be
9 agreed upon that are not in contention amongst the
10 various parties.

11 I think it is incumbent upon all of us to
12 realize one thing about this hearing process: All of
13 the material that comes before this Board that is
14 admitted into evidence is before the Board and the fact
15 that it is not verbalized through oral testimony does
16 not mean that the Board does not consider it and that
17 it will not formulate the basis of our deliberations
18 which will ultimately result in a decision.

19 Therefore, if you find that there are
20 some issues that can be agreed upon essentially by the
21 parties who have various interests to these
22 proceedings, then we expect counsel to be able to
23 advise the Board when presenting this evidence that
24 these issues are not in contention and, consequently,
25 they are dealt with, for instance, in such and such a

1 report or such and such documentation, present that
2 documentation to the Board as evidence, it will be
3 admitted, exhibited, and counsel may just briefly state
4 the contents of what that evidence is and it may not be
5 necessary to call any witnesses to review that
6 evidence. It will be before the Board and the Board
7 will consider it. We give you our assurances that that
8 will be done.

9 Once again, this may substantially cut
10 down some areas where witnesses do not have to be
11 called to go over evidence that is essentially agreed
12 upon by the parties.

13 That brings me to the next point which
14 is: We will encourage, throughout this hearing, for
15 the parties to discuss amongst themselves some of the
16 issues to see whether or not there can be agreement
17 between the parties that some issues are not in
18 contention.

19 As many of you know, the Board has
20 grappled for some time now with the issues concerning
21 what is euphamistically referred to as scoping some of
22 the issues. There has never been any really successful
23 resolution of how to go about doing that, but the Board
24 in this particular hearing is going to attempt, to the
25 extent possible, some scoping exercise that is going to

1 be carried on throughout these proceedings to see where
2 certain issues, which basically are factual in nature
3 and are non-contentious, can be dealt with by the Board
4 in a much more expeditious fashion than just calling
5 witnesses to orally put the evidence in.

6 That brings me to my last point by way of
7 these preliminary comments; that is, when you call your
8 witnesses before the Board, it is not necessary to have
9 the witness read the documentation, if that
10 documentation is in the form of a report, word-by-word
11 starting on page 1 and ending on page 49,000 or however
12 long the report is.

13 Once again, the Board can read and does
14 read, and when those reports come in as evidence the
15 Board reads them. We expect the counsel leading the
16 witnesses to highlight the reports and to, certainly in
17 presenting their case, emphasize the points which they
18 wish the Board to spend more time on, but it is not
19 necessary to read the reports in their entirety. And,
20 once again, we want you to use your best efforts to
21 avoid doing just that.

22 Well, I apologize for this sort of long
23 sermon, but I think at the outset of this hearing we
24 want to try and get some of the ground rules set firmly
25 in place so that as we proceed we all know what kind of

1 structure we are bound by.

2 Now, I want to proceed on to have the
3 various parties to this proceeding identify themselves,
4 indicate who they act for - and a matter which will
5 become of more importance a little later on dealing
6 with these preliminary matters will be, to the extent
7 they can - indicate whether or not they are in
8 opposition or in support of the proponent's proposal.

9 Now, I must caution you, the Board is
10 fully cognizant of the difficulty that this may pose to
11 many of the parties. This is not your usual form of
12 undertaking where the parties might be totally in
13 support or totally in opposition. We fully realize
14 that some parties may well be in support of parts of
15 the undertaking and in opposition to other parts.

16 It becomes somewhat important, however,
17 to at least get some feeling - and we may have to deal
18 with it on an issue-by-issue basis - as to where the
19 parties stand, because this will be a factor in
20 determining the order of both direct examination and
21 cross-examination.

22 And, in that regard, I would refer the
23 parties to the Board's Rules of Practice, which have
24 been recently published, and you might look at Rules 47
25 and 48, on pages 8 and 9 of the English version, which

1 sets out the rough order of presentation and
2 cross-examination, although you will note from the rule
3 itself that the Board can change that at any point, and
4 we may well have to custom tailor this order for this
5 particular hearing as we go along.

6 The other thing that I think I should
7 mention at this point, just before we get into the
8 identification of the parties, is the fact that as we
9 move along we may have to change some of the physical
10 settings with regard to the hearing itself.

11 We are very much into experimenting with
12 the present set-up of this room, with the sound system,
13 with the support facilities and any of your concerns,
14 by the way, might be addressed to Doug Mander, who is
15 sitting at the end of this table down there, who is the
16 Board's hearing liaison officer, with any of your
17 concerns and he will certainly bring it to the Board's
18 attention and will endeavor to clarify and clear up any
19 problems that may arise.

20 Well, I think with that lengthy preamble
21 we can commence with the identification of the parties.

22 Perhaps, Mr. Freidin, you could go first.

23 MR. FREIDIN: Yes. My name is Victor
24 Freidin. I am counsel to the Ministry of Natural
25 Resources, the proponent in this matter. With me today

1 is Catharine Blastorah who will be assisting me.

2 There is a third counsel involved,
3 Kathleen Murphy, who is not here today, but she will be
4 at the hearings from time to time.

5 And if I just might, Mr. Chairman, at the
6 far left is Mr. Larry Douglas who is the Director of
7 Planning and Environmental Assessment Branch of the
8 Ministry of Natural Resources, and sitting next to Ms.
9 Blastorah is Mr. Gord Rogers, who is the Project
10 Manager in charge of Planning with that same branch.

11 THE CHAIRMAN: And I assume that you are
12 in support of this undertaking?

13 MR. FREIDIN: I was going to say it but I
14 thought I wouldn't.

15 THE CHAIRMAN: Very well. I guess,
16 moving along -- we will just move along the front row.

17 Mr. Campbell, you might go next.

18 MR. CAMPBELL: Thank you, Mr. Chairman.
19 My name is Bruce Campbell, appearing with me is Jan
20 Seaborn and the gentleman at the right end -- my right
21 on the table is Mr. Mark Sutterfield who is Chief of
22 Approvals and Planning for the Ministry of the
23 Environment, Northwestern Region.

24 Ms. Seaborn and I appear as counsel for
25 the Minister of the Environment.

1 The role and position which our
2 instructions give us in this hearing can be found at
3 pages 356 through 360 of the transcript of the
4 preliminary meeting which was held previously in
5 Thunder Bay, and unless the matter is placed in some
6 issue, I do not intend to repeat that information in
7 light of your comments on saving time, Mr. Chairman.

8 THE CHAIRMAN: Thank you, Mr. Campbell.
9 Could you just give us the date of the transcript of
10 that? Do you happen to have it?

11 MR. CAMPBELL: I am embarrassed to say I
12 don't, Mr. Chairman.

13 MR. MANDER: It should be January 27th.

14 MR. CAMPBELL: January 27th. Thank you.

15 THE CHAIRMAN: All right. For everybody
16 present, what Mr. Campbell was referring to can be
17 found at pages 356 to 360 in the transcript of the
18 preliminary meetings held in Thunder Bay, January
19 22nd -- sorry, January 27?

20 MR. MANDER: Was it Thunder Bay or
21 Toronto?

22 MS. BLASTORAH: Thunder Bay.

23 MR. MANDER: Okay. Then it was February.

24 MR. CAMPBELL: It was Thunder Bay, I am
25 sorry, Mr. Mander?

1 MR. MANDER: I am not sure, I think it
2 was February 3rd.

3 THE CHAIRMAN: I apologize. We will
4 endeavour to find out what date the preliminary meeting
5 was held in Thunder Bay and advise you of the day
6 because the transcripts are filed for the various
7 locations, but they are also identified by the date as
8 well.

9 MR. CAMPBELL: Well, the apology is mine,
10 Mr. Chairman.

11 I might just add that we concluded those
12 remarks at page 360 of the transcript, noting that
13 because of the regulatory responsibilities associated
14 with the Ministry and the specific review
15 responsibilities associated with the environmental
16 assessment legislation, the Minister will neither take
17 a position in support of, nor in opposition to this
18 proposal.

19 THE CHAIRMAN: Very well. Thank you.

20 MR. CAMPBELL: The date was February
21 4th.

22 THE CHAIRMAN: Thank you, Mr. Campbell.
23 Mr. Hunter?

24 MR. HUNTER: Mr. Chairman, my name is
25 David Hunter. I am acting for the Nishnawbe-Aski

1 Nation and the Windigo Tribal Council.

2 There will be two bands that are now
3 identified, Slate Falls, Osnaburgh and possibly Saugeen
4 in the Windigo Tribal Council area who will appear. At
5 this point in time, additional communities in Nishnawbe
6 are making their decisions and there may be additional
7 communities who will specifically wish to appear before
8 you.

9 With me is Charles Fox, who is the
10 Executive Director of the Windigo Tribal Council, Mr.
11 Chairman. He has appeared before you before.

12 Mr. George McKibbin, who is an
13 environmental planner, and Ms. Donna Pawlowski who is
14 also an environmental planner.

15 THE CHAIRMAN: Thank you, Mr. Hunter.

16 MR. HUNTER: We will be in opposition
17 substantially to the undertaking and we will ask the
18 Board to reject it.

19 THE CHAIRMAN: Perhaps we can go to that
20 end over there.

21 Mr. Williams?

22 MR. WILLIAMS: Mr. Chairman, my name is
23 John Williams appearing as legal counsel on behalf of
24 the Ontario Federation of Anglers & Hunters located in
25 Peterborough, Ontario, 169 Charlotte Street, Post

1 Office Box 28, Peterborough, K9J 6Y5.

2 Mr. Chairman, I presume that at some time
3 immediately following the introduction of parties and
4 representatives that you will be entertaining opening
5 statements. If that is so, I would, at that time,
6 prefer to indicate the position of the Federation
7 relative to these hearings and the status that we hope
8 to be recognized for in participating in these
9 hearings.

10 But if it is your preference that I
11 acknowledge those positions at this time, I can do so.

12 THE CHAIRMAN: Well, I think, although we
13 will certainly be permitting brief opening statements,
14 I think it would be better for the purposes of the
15 record - so that we might sort out the order of
16 examination - if you could indicate, if it is possible,
17 what position your clients will be taking either
18 generally or specifically.

19 MR. WILLIAMS: Very good, Mr. Chairman.
20 Basically at this time the Federation will be taking
21 the position of being in opposition to the submission
22 as presently written.

23 THE CHAIRMAN: Thank you very much.

24 Yes, sir?

25 MR. EDWARDS: Mr. Chairman, my name is

1 Bob Edwards from the firm of Edwards & Carfagnini in
2 Thunder Bay.

3 I have very recently been retained by the
4 Northern Ontario Tourist Outfitters Association, and I
5 am pleased to have Mr. McKercher, the Executive
6 Director of the Association, here with me.

7 The position that the Association will
8 take is -- with respect to specific issues, will be one
9 of opposition. I can't be more precise than that at
10 this time.

11 There certainly will be a particular
12 interest with respect to road access, and I think we
13 could be properly called a party which would be in
14 opposition, although there may be large portions of the
15 hearing which, due to economic constraints, that we
16 won't be able to participate in.

17 THE CHAIRMAN: Very well, Mr. Edwards.
18 Thank you.

19 Mr. Cosman? Mr. Tuer?

20 MR. TUER: Mr. Chairman, my name is
21 Robert Tuer. I appear with my co-counsel, Mr. R.W.
22 Cosman and Mr. Paul R. Cassidy. Other co-counsel is
23 Ms. E.A. Cronk who is not with us today.

24 We represent the Ontario Forest Industry
25 Association and the Ontario Lumber Manufacturers

1 Association.

2 Sitting to my right is Mr. Alan Mathews
3 of Fort Frances who today is representing our clients.
4 Others will fill that chair from time to time as the
5 hearing proceeds.

6 The OFIA and the OLMA are both largely
7 supportive of the undertaking and that will be our
8 general position throughout the hearing.

9 THE CHAIRMAN: Thank you, Mr. Tuer.

10 MR. COTTON: Mr. Chairman, my name is
11 Roger Cotton and I appear on behalf of, and counsel
12 for, Boise Cascade Canada Ltd.

13 We are here generally in support of the
14 document and the undertaking proposed. As you know,
15 Boise Cascade has large interests in northwestern
16 Ontario and intends to monitor the hearing.

17 THE CHAIRMAN: Thank you.

18 MR. SANFORD: Mr. Chairman, my name is
19 Philip Sanford, it is spelled S-a-n-f-o-r-d, and I
20 appear today for the Kimberly-Clark Canada Ltd. and for
21 Spruce Falls Power & Paper Company Limited.

22 If I may, Mr. Chairman, I would like to
23 request that you place on the record as well my partner
24 Dennis Wood and my colleague Lori Nicholls. And my
25 clients are generally in support of the undertaking.

1 THE CHAIRMAN: Thank you, Mr. Sanford.

2 MR. COLBORNE: My name is Don Colborne,
3 Mr. Chairman. I am counsel to Grand Council Treaty No.
4 3. You may place us in the column of parties opposed
5 to the undertaking.

6 I am here today with, among other people,
7 a member of the Executive Council of Grand Council
8 Treaty No. 3, Chief George Kakeway. We were a little
9 short of space up here so he is not with me.

10 THE CHAIRMAN: Thank you.

11 MR. COLBORNE: I indicated that my
12 clients are opposed to the undertaking. I would also
13 advise, however, that there are certain portions of it
14 which, by reason of economic constraints, we will not
15 be making actual representations or attending here.

16 Thank you.

17 THE CHAIRMAN: Thank you, sir.

18 Going back to the table at my far right.

19 MR. SCOTT: Mr. Chairman, my name is
20 Douglas Scott. I am here with the President of the
21 Northwestern Ontario Associated Chambers of Commerce.

22 By and large, I will say we are
23 supportive of the undertaking. We have difficulties
24 with some portions of it and with this process which we
25 will speak to later on.

1 MR. BABCOCK: Mr. Chairman, my name is
2 Brian Babcock and I am the solicitor for the Red
3 Lake-Ear Falls Joint Municipal Committee.

4 In a broad sense, we are supportive of
5 the undertaking. We have serious reservations with
6 respect to certain portions of the undertaking which I
7 will address at the appropriate time.

8 THE CHAIRMAN: Thank you, Mr. Babcock.

9 MR. CASTRILLI: Good morning, Mr.
10 Chairman. My name is Castrilli, initials J.F. I
11 appear as counsel for the coalition known as Forests
12 for Tomorrow made up of five provincial conservation
13 organizations; namely, the Wildlands League, the Sierra
14 Club of Ontario, the Federation of Ontario Naturalists,
15 the Timiskaming Environmental Action Committee and the
16 Botany Conservation.

17 Appearing with me from time to time is
18 Michelle Swenarchuk and Mr. Lindgren, initial R.

19 You can place us in the category of those
20 parties opposed to the undertaking.

21 THE CHAIRMAN: Yes?

22 MR. REILLY: Mr. Chairman, my name is
23 Ross Reilly and I appear as counsel for the Ontario
24 Metis & Aboriginal Association.

25 Along with myself from time to time will

1 be appearing Elaine Pitcher. By the way, I am from
2 Sault Ste. Marie, Ontario.

3 This Association is under extreme
4 financial constraints and we anticipate appearing very
5 little.

6 In general, I would say we are opposed to
7 certain parts of the proposal.

8 THE CHAIRMAN: Thank you, sir.

9 Now, we obviously had not set up more
10 tables for various counsel.

11 Are there any other counsel who are in
12 the audience at the back who would like to identify
13 themselves and, if necessary, we can provide perhaps
14 some additional tables if that becomes necessary.

15 If not, then I think we will probably
16 move on to any other members of the public who wish to
17 identify themselves at this time, and who may be acting
18 for themselves or their group, to indicate if that is
19 the case and to also indicate, to the extent of their
20 ability, whether they support or oppose the
21 application.

22 Would anybody like to identify themselves
23 in that category at this time?

24 (No response)

25 Very well. As most of you are aware,

1 many of these parties who have identified themselves
2 appeared at one or more of the preliminary meetings
3 leading up to the commencement of this proceeding and
4 they are familiar, to some extent, to the Board and we
5 will, in all probability, have additional parties
6 appear from time to time at other locations as the
7 hearing moves to other locations.

8 Now, ladies and gentlemen, a few of the
9 parties who identified themselves indicated that they
10 are suffering from financial difficulties, and that may
11 or may not have an effect on their ability to
12 participate.

13 I must advise all of you, as most of you
14 are aware: This panel does not have the jurisdiction
15 whatsoever to deal with intervenor funding. That has
16 been dealt with by another funding panel comprised of a
17 member of the Environmental Assessment Board operating
18 pursuant to a specific Order-in-Council passed by the
19 Ontario Cabinet.

20 It is my understanding that all of the
21 funds that were allocated by that Order-in-Council have
22 now been allocated by the funding panel to specific
23 parties in accordance with criteria set by that funding
24 panel, and unless the Ontario Government at some point
25 in time decides to allocate more funds for the purpose

1 of assisting in participation by parties before this
2 Board, there will be no more funds allocated by that
3 funding panel.

4 I might also advise you that this Board,
5 under the Environmental Assessment Act, pursuant to
6 which this application is brought, has no power to
7 award costs at the end of the proceedings.

8 That is something that the Joint Board
9 under the Consolidated Hearings Act has, but this Board
10 under the Environmental Assessment Act does not have
11 the power to award costs. And so, therefore, we will
12 not be able to entertain any motions for costs at the
13 conclusion of these proceedings.

14 Although some parties may experience some
15 difficulty in obviously attending on a full-time basis,
16 you will no doubt be aware from the preliminary
17 meetings that we have endeavoured to assist
18 participation in every way we can, and that the parties
19 will be allowed to present their own evidence in any
20 one of the locations set out in the procedural
21 directives and the notice of hearing itself, provided
22 that it is clearly understood that when you present
23 your evidence at one location, you will be
24 cross-examined on that evidence and any reply evidence
25 will also happen at the same location.

1 With respect to the Ministry's evidence,
2 it will be given in Thunder Bay and the
3 cross-examinations of the Ministry's evidence - this is
4 the Ministry of Natural Resources - will be also given
5 in Thunder Bay, as will any reply evidence, And that is
6 so that we do not have to - and we cannot, to be
7 honest - repeat the evidence in this case at every
8 single location that we have chosen across the
9 province.

10 If that were the case, this hearing would
11 never end and it would be an intolerable burden on both
12 the Board and, I would suggest, all of the parties and
13 the public at large.

14 We have had to compromise in certain
15 instances and the compromises that we have chosen we
16 hope are deemed to be fair by the parties, and we have
17 certainly made our decisions in that regard based on
18 what we feel will assist the parties.

19 Well, I think we have now at least covered
20 some of the preliminary matters, but I suspect that
21 there are a number of others that we will have to deal
22 with before we get to that long awaited moment of
23 calling the first witness. I do not think we are quite
24 there yet.

25 Now, one of the things that we will deal

1 with again is the filing of documentation and, more
2 particularly, the distribution of documentation.

3 As many of you will recall, we ordered,
4 after the preliminary meetings, that the Ministry serve
5 its witness statements in accordance with a timetable
6 that resulted from much discussion at the preliminary
7 meetings themselves.

8 Based on the fact that the Ministry
9 thought at that time it would not be that long with the
10 first four panels of witnesses, we asked that those
11 witness statements be served prior to this commencement
12 date and that interrogatories on those witness
13 statements, relative to the first four witness panels,
14 be also exchanged.

15 What we did not realize was the fact that
16 the party list is somewhere up in the neighborhood of
17 54 persons, groups or organizations, and I am sure that
18 as we proceed it will probably increase in number.

19 As a result, we had instructed the
20 Ministry to serve its witness statements for the first
21 four panels on all of the parties, the entire party
22 list.

23 We had also asked parties to indicate
24 whether they wanted all of the documentation relative
25 to these proceedings or just a portion of that

1 documentation relative to issues that a particular
2 party might be interested in particularly.

3 I believe that the list was whittled down
4 to something like 19 who requested full documentation
5 and many of those 19 represent what you might call
6 part-time parties in the sense that they are parties
7 that will not be at the proceedings on a regular basis,
8 almost a daily basis.

9 Now, the Board seriously wants to canvass
10 the proposition that it may not be necessary,
11 reasonable, nor fair to insist that all of the parties
12 receive complete documentation. I think those of you
13 who have received the witness statements from the first
14 four panels will realize the type of documentation we
15 are talking about. They are lengthy documents, they
16 are expensive to reproduce, they are expensive to
17 distribute, and unless the Board is assured that these
18 documents are going to be utilized by the parties; that
19 is, read in their entirety, we think it is probably
20 unfair and unreasonable to order distribution to the
21 full list, certainly the full list - which is the 56 -
22 and perhaps even part of the list, which now comprises
23 19 of those parties who requested full documentation.

24 Now, I think in that regard I would want
25 to hear submissions from the various parties here as to

1 how the Board should go about handling the distribution
2 of all these documents.

3 And just before we get into that, Mr.
4 Freidin, you may have something to say about that as
5 many of the other parties, that brings us also to the
6 point of the interrogatories.

7 Now, as many of you are aware, parties
8 have submitted interrogatories and the Ministry in
9 certain instances has responded to those
10 interrogatories. But, again, we are running into what
11 I would consider serious logistical problems in that
12 some of the documentation compromises things like maps,
13 large diagrams, large exhibits which are extremely
14 expensive and, in some cases, cannot be duplicated
15 easily, and we just cannot be in a position to force
16 the parties to distribute these documents or drawings
17 or maps to everyone who requests a copy.

18 I think what we are going to have to do
19 with some of those documents is make them available --
20 file them with the Board and make them available in the
21 public viewing room which is located on this floor,
22 down the hall from the hearing room itself, where any
23 members of the public or any of the parties can view
24 them at their leisure and handle that kind of
25 distribution difficulty in that fashion.

1 I might also point out that, again in the
2 interest of fairness, when we compel one party to do
3 something, although the resources of course are not the
4 same, in some instances we may also be compelling other
5 parties to do the same thing. And that means if
6 certain parties are required to distribute this
7 documentation to a great number of parties at a
8 considerable expense, when it comes your turn to submit
9 similar documentation you might find yourself also
10 under the obligation to distribute that documentation
11 to a rather enlarged party list.

12 And I think all of us have to view this
13 distribution problem with some moderation and with some
14 degree of restraint because it is a very expensive,
15 difficult thing to accomplish.

16 Well, let's start off with, I guess, a
17 discussion of this distribution problem to start off
18 with.

19 MR. FREIDIN: Mr. Chairman, I will
20 address the two matters that you raised. The first one
21 being the number of people to whom there should be full
22 distribution. That's something that I will not make
23 any particular submissions on.

24 I think the process that the Board
25 followed in asking for the requests and identifying, I

1 believe it was 19 people, is satisfactory.

2 In terms of the interrogatories and having
3 copies of the documents which are attached or which are
4 supplemental to some of the answers, we are willing
5 to -- I had discussions with -- Ms. Murphy had
6 discussions with Mr. Mander and I understand that there
7 was a discussion that we would make available copies of
8 all of the answers and all of the attachments to those
9 answers, one copy at the Board's office in Toronto, we
10 would make another copy available here in Thunder Bay
11 so it will be available in the reading room. So I
12 think that is a good way of dealing with that.

13 We have, in relation to interrogatories
14 which have already been asked, in some cases, provided
15 copies of the document which supplemented an answer to
16 people other than the individual person who asked the
17 question. We approached the task by, starting off,
18 that we will only give copies of the attachments to
19 those people who asked the questions.

20 If people want to see or believe that it
21 will be helpful to have that sort of material, then I
22 would ask that they contact my co-counsel, Kate Murphy,
23 and we will see whether things could work out on that
24 basis. I think they have worked on that basis today,
25 and I don't believe anything of a formal nature is

1 required other than to have the copies available in the
2 public reading rooms and at the Board offices in
3 Toronto.

4 I have other submissions that I will make
5 later in terms of service, but I think I will save
6 those for later.

7 THE CHAIRMAN: Very well.

8 Mr. Campbell, do you wish to address any
9 of these matters?

10 MR. CAMPBELL: No, Mr. Chairman. I would
11 support the provision of one copy of the documents
12 referred to in interrogatories being provided in the
13 public reading room.

14 I guess I would like to clarify just a
15 couple of assumptions that I have made in that respect,
16 the first assumption being that there would be evening
17 hours in which that room would be open.

18 THE CHAIRMAN: I believe we are arranging
19 for that; is that not the case?

20 MR. MANDER: I think we will provide
21 full-time counsel with keys so that they can go in and
22 out.

23 THE CHAIRMAN: What about members of the
24 public?

25 MR. MANDER: I don't know, we haven't

1 decided that.

2 THE CHAIRMAN: Well, I guess
3 logistically, we have not got that quite sorted out
4 yet, Mr. Campbell, but I would like to arrange -
5 because I think that is the time when a lot of people
6 will find it convenient, when they are not in the
7 hearing room itself during the day for the
8 proceedings - to view some of this documentation,
9 either in preparation for their own case or to
10 supplement what is happening in the hearing room
11 itself.

12 We will try and arrange for that room to
13 be open, I guess maybe until something like ten o'clock
14 at night.

15 MR. CAMPBELL: I think ten would be very
16 generous from the end of the hearing, Mr. Chairman.

17 THE CHAIRMAN: Well, it may be too
18 generous because, again, what we are looking at is we
19 have to arrange a system so that documentation does not
20 disappear and, you know, it is not totally open to
21 people not concerned with this hearing as well.

22 MR. CAMPBELL: Fine, Mr. Chairman. It
23 was just I was concerned that that matter be given some
24 thought, and I can see that it has.

25 THE CHAIRMAN: That is certainly the

1 object and one of the considerations in trying to hold
2 the hearing itself at a hotel, because it is not like
3 municipal offices or council chambers or whatnot that
4 close down at a reasonably early hour. So we should be
5 able to provide that facility. How we are going to do
6 it exactly, we will have to sort out.

7 MR. CAMPBELL: The other assumption I
8 have been proceeding on, Mr. Chairman, is that while
9 the interrogatories are available to be perused by all
10 parties, and I gather the Board is facilitating the
11 filing for that purpose, that filing does not
12 constitute, in my understanding, entry of that material
13 into evidence before the Board. That will only happen
14 once it is introduced through a witness.

15 THE CHAIRMAN: That is quite correct.
16 Just because the stuff is exchanged and it is filed
17 with the Board, it is not admitted into evidence until
18 effectively it is presented by a party, introduced and
19 some proof given as to its authenticity, et cetera, and
20 an opportunity for any objections to be made to it
21 being admitted in evidence.

22 MR. CAMPBELL: Thank you, Mr. Chairman.

23 THE CHAIRMAN: Are there any other
24 counsel who would like to address this?

25 Mr. Cotton?

1 MR. COTTON: Mr. Chairman, in the spirit
2 of your comments in regard to whittling down the list
3 of 19, as you are aware, Boise Cascade, Kimberly-Clark
4 and Spruce Falls are all represented by the same law
5 firm. I have spoken to Mr. Sanford on behalf of
6 Kimberly-Clark and we have agreed that one copy to our
7 firm would be sufficient to cover those parties, if
8 that assists.

9 THE CHAIRMAN: Thank you very much, Mr.
10 Cotton. I am sure that will assist.

11 So that is one copy with regard to Boise
12 Cascade, Kimberly-Clark--

13 MR. COTTON: Spruce Falls, Mr. Chairman.

14 THE CHAIRMAN: --Spruce Falls.

15 MR. COTTON: And if that could be
16 directed to my attention, Mr. Chairman, I will take
17 care of the logistics.

18 THE CHAIRMAN: Thank you.

19 Anybody else wish to address this
20 problem?

21 Mr. Castrilli?

22 MR. CASTRILLI: Mr. Chairman, yes. As
23 you are aware, we of course do not have unlimited funds
24 and are concerned about the potential for having to
25 file 19 -- potentially 19 copies every time we send a

1 letter to anyone.

2 We would ask that the Board consider
3 limiting the distribution of interrogatories to those
4 full-time parties who are in attendance at the hearing.

5 THE CHAIRMAN: So you would ask the Board
6 to limit it to full-time parties in attendance at the
7 hearing?

8 MR. CASTRILLI: Yes, that is correct.

9 THE CHAIRMAN: Well, that is a
10 suggestion. I am not sure the Board wants to go quite
11 that far because there are parties who cannot be
12 present at the hearing but, nevertheless, are going to
13 take a significant part when it reaches their area.

14 Do any other counsel have anything to say
15 with respect to Mr. Castrilli's suggestion and the
16 suggestion is, is that the interrogatories and the
17 distribution of witness statements and the answers to
18 interrogatories be limited to full-time parties before
19 the Board.

20 Yes, sir?

21 MR. COLBORNE: Mr. Chairman, I represent
22 a part-time party and I had corresponded with Mr.
23 Mander asking that we be forwarded, we be provided with
24 all documentation. So I represent a party who does
25 fall within the category as suggested, and there is a

1 reason why we want that.

2 You may have just gained one or two steps
3 over here, but I am asking that you lose one over here,
4 because my clients cannot attend daily the number of
5 hearings that are going to take place, but on the other
6 hand, do have a staff and ability to examine and also
7 to store, for future use, the documentation that will
8 be produced here. And although I recognize the value
9 of libraries and so on, if possible, we would like to
10 have a full set of documents.

11 THE CHAIRMAN: Yes, sir?

12 MR. REILLY: Mr. Chairman, may I voice
13 the same feeling. We of course, as I indicated to you,
14 are located in Sault Ste. Marie, so the alternatives
15 are not very palatable: Either we come and live in
16 Thunder Bay or come up here and look at documents in
17 the evening, and one of the reasons for asking for the
18 documents is so that we will have knowledge of what is
19 going on. The alternative is to attend full time on
20 the hearings and really that is not possible.

21 THE CHAIRMAN: Right. I guess, and I
22 fully recognize -- the Board fully recognizes the
23 statements made by the last two gentlemen and, of
24 course, what the Board is trying to do -- and fully
25 realizes that everybody cannot be present in Thunder

1 Bay, and that is why we have set up the idea that at a
2 later stage in the process the Board will move around
3 the province to facilitate participation in other
4 locations and we are going to try to facilitate
5 participation by making documentation available
6 throughout the province.

7 I guess where I was trying to sort of
8 limit the burden in connection with the distribution of
9 documentation was to ask parties who are really only
10 interested in a specific aspect of the undertaking or
11 relatively specifically defined issues to ask
12 themselves whether they need documentation for the
13 complete proceedings or whether they would be content
14 with documentation dealing with the issues that they
15 are particularly interested in.

16 And I would suspect that there are some
17 parties that fall into that latter category, that are
18 interested in an area of this undertaking that directly
19 affects them and, therefore, would really only benefit,
20 to any large degree, on receiving documentation in
21 connection with those areas.

22 For instance, as you will note from an
23 outline that either was alluded to at the preliminary
24 meetings or perhaps something has gone around at this
25 point, there are going to be, you know, some 20 panels

1 of witnesses called by the proponent and those panels
2 will be dealing with issues and certain types of
3 issues.

4 Now, it may be that some of the parties
5 would only be interested in the issues dealt with by
6 panels 8, 9 and 10, as an example, and not with some of
7 the other panels.

8 Those parties might be willing to say to
9 the Board: We only require full documentation with
10 respect to panels 8, 9 and 10 and, therefore, we don't
11 require full documentation with respect to the other
12 panels.

13 If that is the case, I think that would
14 facilitate, to a large extent, both sides of the
15 problem; making sure that the parties who are
16 interested in certain portions have the documentation,
17 and making sure that parties who really are not
18 interested in some of the other issues, do not have the
19 documentation at the expense of those who have to
20 prepare and distribute that documentation.

21 So I ask the last two gentlemen who stood
22 up, I don't know whether you fall into that last
23 category that I just mentioned, or whether you still
24 wish to be considered in terms of receiving everything
25 across-the-board?

1 Perhaps I will ask the first gentleman.

2 MR. COLBORNE: I am afraid, Mr. Chairman,
3 I don't have enough information yet to answer that.

4 THE CHAIRMAN: Okay.

5 MR. COLBORNE: I understand your point
6 very well though, and if it emerges that there are
7 clearly panels with evidence in which my clients have
8 no interest at all, I will advise the Board.

9 THE CHAIRMAN: All right. I think that
10 is fair. I mean, if we can have this kind of spirit of
11 cooperation right from the outset of this hearing, I
12 think it is going to help everyone in the long run.

13 If you move along in the hearing and find
14 out that there are issues that you are just not
15 interested in, please advise the Board through Mr.
16 Mander and he will take meticulous notes and make sure
17 that documentation is either sent to you with respect
18 to the issues you are interested in or you would be
19 deleted from the distribution list even with respect to
20 certain panels.

21 How about the second gentleman?

22 MR. REILLY: Yes, Mr. Chairman. I can
23 assure you that we don't want documentation which is of
24 no value to us because there is enough documentation to
25 read and we will certainly undertake to advise the

1 Board if there are panels that we are not interested
2 in.

3 Now, I also have been recently retained
4 in this, so I speak from some ignorance, and I will see
5 how it opens up.

6 THE CHAIRMAN: Very well. And, again, I
7 think this whole process will be facilitated when the
8 parties present the other parties with an outline of
9 what their evidence is going to consist of and what
10 their panels are going to be dealing with.

11 MR. FREIDIN: Mr. Chairman, just in
12 relation to that. I do have with me copies of the
13 outline which were distributed at the preliminary
14 meetings and I would ask the Board's permission to
15 speak to that outline to, in fact, facilitate the very
16 type of arrangement that you are suggesting.

17 THE CHAIRMAN: Very well.

18 MR. EDWARDS: Mr. Chairman, I would ask
19 to reserve my rights to advise the Board about our
20 position. I would expect that there are some areas
21 which would not be of a tremendous, burning interest to
22 the Tourist Outfitters Association.

23 However, as I indicated, I have been
24 recently retained and I would just like to advise the
25 Board in due course as to our position on that.

1 THE CHAIRMAN: Okay.

2 Ladies and gentlemen, we are going to
3 take a break very shortly. I think I should indicate
4 at the outset what the Board has in mind with respect
5 to the sittings, and I think we will continue this
6 dialogue after the break.

7 As many of you are aware, a number of the
8 parties are originating from Toronto or points in
9 southern Ontario to come up here on a weekly basis.

10 What we have decided to do is, to the
11 extent possible, fly in Monday mornings and either --
12 Mr. Mander will have a further announcement about the
13 flights originating from Toronto a bit later, but you
14 either fly in Canadian, International or Air Canada and
15 I believe that those flights end up here within 15
16 minutes of each other, around 10:30 to 10:45, I believe
17 on a Monday morning.

18 God help any of us who don't get on
19 either of those two planes because I think there is
20 quite a number, and I know when I came up here
21 yesterday it was filled to capacity.

22 But we are going to start later in the
23 morning on Mondays, probably somewhere around 11:15 to
24 11:30 on Monday mornings, but it is the Board's
25 intention to sit relatively late that day. And when I

1 say late, we may sit until around seven, because we do
2 intend to have as complete a hearing day as we can,
3 notwithstanding that we are starting later.

4 Now, the Board proposes to take a 15 to
5 20 minute break in the morning session and in the
6 afternoon session. From time to time there will be
7 other breaks occasioned by reason that the Board will
8 be having to retire to consider making rulings, there
9 may be witness panels that have to set up something
10 prior to giving their testimony, so we may be breaking
11 more than the two regular times, but we are going to
12 try to break after about an hour and a half's evidence
13 in the morning session and the same in the afternoon.

14 That gives everybody a bit of a breather
15 and, more importantly, it gives our court reporter a
16 chance to take a break as well.

17 On Thursdays, for the weeks that we sit
18 Monday through Thursdays, we are going to hopefully
19 start earlier in the morning - and I am suggesting
20 somewhere around 8:30 - so that the Board can rise at
21 about 3:00 to 3:15 in the afternoon so as to catch, I
22 believe, a 4:45 plane that leaves Thursday afternoon
23 heading south, and to other points across the province.
24 And that will allow those who live in other locales to
25 be home Thursday evenings.

1 The Board will not be sitting Fridays,
2 except for the weeks that we have specified. We will
3 try and do what we have done up to this point and, that
4 is: Distribute a schedule for the forthcoming two or
5 three or four weeks ahead so that people can make
6 reservations and plan.

7 The weeks that we will not be sitting
8 Mondays and will be starting on Tuesday, we will, in
9 all probability, be sitting Fridays.

10 We hope to, on a regular basis, have a
11 four-day hearing week. And, again, there will be
12 breaks inbetween the schedule for things that are
13 unavoidable.

14 So, if these general arrangements pose
15 any particular problems for counsel or other parties,
16 then you can speak to the Board and in certain
17 instances we will be willing to listen to your
18 representations, but I must advise you - and I suppose
19 warn you in advance - we are going to stick to a fairly
20 rigid schedule.

21 I would suggest for counsel who cannot
22 attend on certain dates to make arrangements for
23 somebody to attend in their place because we do not
24 intend to shut down the hearing when various parties
25 indicate, for one reason or another, that they cannot

1 attend on a particular day. There are too many parties
2 involved in this hearing, there are too many diverse
3 interests, and we just have to basically make other
4 arrangements where possible.

5 The other thing that we are going to have
6 to get into is the calling and arranging for witnesses
7 to be here when they are needed. And, again, I am
8 going to ask counsel who are calling witness panels to
9 monitor the hearings closely and, to the extent
10 possible, decide when their witnesses are going to be
11 required.

12 Again, we do not want to get into the
13 situation where we start off in the morning and finish
14 a witness panel at eleven o'clock in the morning and
15 have nothing to do for the rest of the day because the
16 next witness panel is not available. So that we want
17 to be able to keep this hearing moving on a regular
18 basis.

19 Well, I think we will come back and just
20 further address this problem of distribution right
21 after the break.

22 I think we will rise now for 20 minutes.
23 Thank you.

24 ---Recess at 11:15 a.m.

25 ---Upon resuming at 11:35 a.m.

1 THE CHAIRMAN: Thank you. Please be
2 seated.

3 Well, ladies and gentlemen, during the
4 break the Board has considered a couple of things.

5 We are going to probably provide,
6 firstly, some employment for maybe some students in
7 Thunder Bay by considering hiring a student from one of
8 the universities to be available in the public viewing
9 room in the evenings and we will try and make
10 arrangements for that viewing room to be kept open
11 until 10:00 p.m. which will allow the public to view,
12 and counsel to view, all of the documentation,
13 particularly those things for they do not have
14 distributed to them directly.

15 (Perhaps that little child wants a job)

16 As far as keeping it open on Fridays,
17 that may be another consideration because the Board
18 normally will not be sitting on Fridays and it may be
19 that some of the parties in the public could utilize
20 reviewing the documentation on that day as well, and we
21 will give that some consideration.

22 Getting back to where we were with
23 respect to the distribution of the documentation.

24 Mr. Castrilli, we have given some
25 consideration to your suggestion that the documentation

1 distribution be limited to only full-time parties and I
2 think can tell you at this point that we reject that
3 suggestion.

4 Again, I think it is important that as
5 many people as possible have access to the
6 documentation and we will at least try to see that
7 those who want full distribution get it, with the hope
8 that they will seriously consider their positions when
9 they see the outlines with respect to documentation
10 that they may not require and so notify the Board.

11 I think we are going to proceed on that
12 basis at this point in time.

13 I think what I would like to do at this
14 point though is to identify, specifically at least from
15 those here, those parties that do require full
16 documentation and, of course, those who would be
17 attending on a relatively full-time basis, so that we
18 have an up-to-date list to the extent possible.

19 So if each of the parties would, I guess
20 starting at this end, would just identify themselves
21 quickly as to whether they require full-time
22 documentation, I think that would be advantageous.

23 And, I take it, Mr. Freidin, that you are
24 one of them?

25 MR. FREIDIN: That is correct, nor do I

1 have any difficulty in filing with the Board.

2 THE CHAIRMAN: Very well.

3 Mr. Campbell?

4 MR. CAMPBELL: Mr. Chairman, we certainly
5 fall into that category as well.

6 THE CHAIRMAN: Okay.

7 Mr. Hunter?

8 MR. HUNTER: Yes, Mr. Chairman. If I
9 could just have a moment, we are trying to determine
10 whether it should be sent here or sent to my office.

11 THE CHAIRMAN: Okay.

12 MR. HUNTER: It should be sent to
13 Godfrey, Campbell and Lewtas, Post Office Box 36,
14 Toronto-Dominion Centre, Toronto, Canada, M5K 1C5.

15 Mr. Chairman, with respect to the reading
16 room, will there be a transcript available in that
17 reading room? I may have missed that in your
18 discussion?

19 THE CHAIRMAN: Yes, I believe there will
20 be and, if there is not, we will ensure that that is
21 one of the places I think it should be as well so that
22 people can utilize the transcript in conjunction with
23 the documentation.

24 MR. HUNTER: Thank you.

25 THE CHAIRMAN: Mr. Freidin, I am not sure

1 whether that was one of the places that we had
2 contemplated the transcripts going.

3 MR. FREIDIN: I am sorry, Mr. Chairman, I
4 didn't catch Mr. Hunter's remark.

5 THE CHAIRMAN: Whether there would be a
6 set of transcripts available in the reading room
7 itself. I think there should be and we would like to
8 make arrangements for that.

9 MR. FREIDIN: My understanding is that we
10 are making two copies available for the Board, so if
11 one of them...

12 THE CHAIRMAN: All right. The Board will
13 deposit one set of those transcripts in the reading
14 room for public viewing.

15 MR. FREIDIN: I should also advise you,
16 Mr. Chairman, that a copy of the transcript, a copy of
17 the interrogatories and the answers thereto, and the
18 panel statements, will also be available at the
19 Ministry library in the Whitney Block in Toronto.

20 THE CHAIRMAN: Very well.

21 Mr. Williams?

22 MR. WILLIAMS: Mr. Chairman, as a
23 part-time party to the proceedings, the Federation
24 would require that it be provided with full
25 documentation until such time as we notify the Board

1 through Mr. Mander to the contrary.

2 THE CHAIRMAN: Very well.

3 Mr. Edwards?

4 MR. EDWARDS: We adopt the same position
5 as Mr. Williams.

6 THE CHAIRMAN: Thank you.

7 Mr. Cosman?

8 MR. COSMAN: Yes, Mr. Chairman. We are a
9 full-time party and we will require appropriate
10 documentation.

11 THE CHAIRMAN: Mr. Cotton?

12 MR. COTTON: I believe we have indicated
13 the arrangement we made.

14 THE CHAIRMAN: All right, okay.

15 Who else do we have?

16 MR. SCOTT: Mr. Chairman, Mr. Scott from
17 NOJCC. We will require but we will notify you if there
18 are sections we don't.

19 THE CHAIRMAN: Very well.

20 MR. BABCOCK: We won't be in attendance
21 full time, however, in order to know what we will
22 attend for, we will probably require all of the
23 material.

24 I will notify Mr. Mander if there are
25 parts of witness panels that we have no interest in.

1 THE CHAIRMAN: Thank you.

2 Mr. Castrilli?.

3 MR. CASTRILLI: Yes. We will be a
4 full-time party and will require all documentation.

5 THE CHAIRMAN: Mr. Reilly?

6 MR. REILLY: We will be a part-time
7 party, but will require full documentation.

8 THE CHAIRMAN: Very well.

9 Very well, ladies and gentlemen.

10 I think we will move on to another issue,
11 and this is one that the Board I am sure will revisit
12 from time to time, concerns the exchange of
13 interrogatories; first of all the filing of the witness
14 statements and then the time limits with respect to the
15 posing of interrogatories and receiving the answers to
16 interrogatories.

17 Now, there has been some difficulties I
18 think that have surfaced over the distribution by the
19 Ministry, the proponent, of multiple panel witness
20 statements at the same time.

21 Now, as you are probably aware, we
22 ordered the Ministry to distribute the first four
23 panel -- the witness statements with respect to the
24 first four panels within a time that would allow 60
25 days prior to the calling of the evidence.

1 That was in order to facilitate this
2 hearing commencing today. And then within 30 days of
3 being served with the statements, the parties who
4 wished to pose interrogatories were to do so and then
5 the Ministry was to reply before a 10-day period which
6 was before they were to actually call those panels.

7 Now, obviously there is a difficulty to
8 some of the parties if the Ministry serves witness
9 statements with respect to more than one panel at the
10 same time.

11 First of all, it is a lot of work for the
12 parties to review those witness statements and be able
13 to pose the interrogatories within the time limits that
14 we had originally specified, and we are of the opinion,
15 I think, that it would be better to stagger or stage
16 the production and distribution of the witness
17 statements in some fashion so that the parties are not
18 diluged with documentation that is very difficult to
19 get through in a short period of time and still meet
20 some of the other time limits.

21 I think we are contemplating perhaps
22 making a change in saying that: When the witness
23 statements are distributed, that if the interrogatories
24 were submitted 40 days in advance of the testimony as
25 opposed to 30 days after receiving the witness

1 statement, that might allow the parties some additional
2 time.

3 The only problem with that suggestion,
4 franky, is that that predicates that the parties will
5 know when those witness panels are actually going to
6 testify and I am not sure, frankly, that we could ever
7 define that time frame with any degree of specificity
8 to make that kind of suggestion work.

9 That was one of the suggestions that we
10 considered.

11 I do not know if any of the counsel here
12 have sort have addressed their minds to what the
13 problem is. But if the parties -- you see, if the
14 Ministry decided it wanted to, and it knew who it was
15 calling - and this could apply not just to the Ministry
16 but to any of the other parties - if it knew that it
17 was calling the next eight witness panels somewhere
18 down the line and had the witness statements ready, it
19 could theoretically distribute the eight sets of
20 witness statements on a given day.

21 MR. FREIDIN: It won't happen.

22 THE CHAIRMAN: Well, it won't happen
23 because we won't let it happen. But, theoretically,
24 under the way we have structured the other rules, it
25 could happen and then the parties would be forced more

1 or less to pose interrogatories on all eight panels
2 within a 30-day period, notwithstanding that the
3 evidence would not be adduced for several months down
4 the road.

5 And I think that is why we would want to
6 insist that the distribution of the witness statements
7 are staggered in some fashion. I do not think the
8 Board wants to tie it into when the witnesses are going
9 to be called because, in some cases, it may preclude
10 you giving extra time to parties to respond to the
11 witness statements and we, of course, would like the
12 parties to have as much time as possible in order to
13 view these witness statements and not just allow them a
14 70-day period if, in fact, we can give them more time.

15 Do you follow the difficulty the Board is
16 having? We would like to, sort of, give as much time
17 as possible, but we do not want to place the onus on
18 the parties to have to pose the interrogatories within
19 a set period of time.

20 Mr. Campbell?

21 MR. CAMPBELL: Mr. Chairman, could I
22 suggest on this matter that the rules, as they
23 presently stand, do provide some minimum time period,
24 70 days, that should be adequate; that, as well, Mr.
25 Freidin has indicated that he doesn't anticipate

1 dropping eight panels on us at once - he would be hung
2 from the rafters if he did, never mind by the Board -
3 and that certainly it would be my recommendation that
4 we not change the rules again at this point just as we
5 are getting used to them, but that certainly the
6 Board's concerns could be met with Mr. Freidin giving
7 the undertaking, which I believe he has already given,
8 which is to get witness panels out in a timely way as
9 soon as they are available.

10 I don't get any sense that he is holding
11 them to the last minute and then springing them out.
12 The problem is usually quite the reverse.

13 THE CHAIRMAN: Well, what about the other
14 problem though, Mr. Campbell, that if the witness
15 statements are delivered that the parties only have the
16 30-days within which to pose their interrogatories when
17 it may be dealing with a panel that we are not going to
18 hear from for say three or four months down the road?

19 MR. CAMPBELL: I would just recommend,
20 Mr. Chairman, that if a circumstance like that arises
21 that we deal with it when it arises.

22 My sense of it at the moment is that we
23 are quite in the opposite position in that, depending
24 on how quickly it moves along, we may have a problem
25 because we haven't been able to accommodate the 70

1 days, but I may be optimistic about how quickly the
2 panels are going to go.

3 THE CHAIRMAN: Okay. Does anybody else
4 have anything to add to this dialogue at the moment?

5 And you would have no objections, Mr.
6 Freidin, to sort of stagger the delivery of your
7 statements so that this does not pose a problem, an
8 undue burden on the other parties?

9 MR. FREIDIN: We have in fact attempted
10 to do that. We have not served any statement at the
11 same time, any two statements at the same time.

12 And one of the reasons that some of the
13 parties were getting copies of witness statements,
14 perhaps too quickly in their view, was that the panels
15 at the beginning weren't anticipated to take very long,
16 or as long as this. So to meet that 70-day time
17 requirement, that is what was basically dictated when
18 these documents got served.

19 In relation to the matter of the timing,
20 despite that we spoke of timing in my submission, the
21 present order of the Board talks about service of the
22 witness statement, and we have been interpreting that
23 as meaning service under the Act, either personal
24 service or by mail.

25 And because of the number of people who

1 are being served by sending out mail, we lose seven
2 days because seven days is the time period after which
3 the document is deemed to have been served.

4 And I would request that the Board allow
5 the proponent to deliver witness statements to any of
6 the parties who are entitled to receive them sort of in
7 any fashion, delivery -- then we could arrange to just
8 deliver a copy to them or a pick-up place for them, we
9 could either courier - which we can't do now - having
10 regard to our interpretation of your rules.

11 So perhaps if that particular matter
12 could be addressed it would be helpful.

13 THE CHAIRMAN: Well certainly, Mr.
14 Freidin, I think the Board should state right now, we
15 are not going to feel ourselves bound in terms of
16 interpreting service certainly the way the courts
17 interpret it and I think that any manner of service,
18 particularly utilizing courier services, if you can, to
19 avoid lengthy delays in mail distribution is preferable
20 where the parties can.

21 I think it is fair to the parties because
22 their response to the delivery of those things are
23 predicated on when they get them, to a certain extent,
24 and if the thing is mailed out, then we are presuming
25 they are going to get them within seven days and I

1 think, again, that is reasonable to a certain extent.

2 But if you want to serve them by courier
3 so that they get them the following day or arrange for
4 their delivery by personal service or any other means,
5 I think the Board would encourage that, because the
6 name of the game is to getting the documentation into
7 the hands of those entitled to receive them.

8 MR. FREIDIN: Now, that approach would
9 apply not only to witness statements but also to
10 interrogatories.

11 THE CHAIRMAN: That is right. Again,
12 with the feeling that you want to get them there as
13 quickly as possible to give various parties the maximum
14 amount of time to be able to respond.

15 MR. FREIDIN: In relation to another
16 matter, Mr. Chairman, the 70 days requirement, for
17 obvious reasons, gives my client some concern as to how
18 well it is able to predict the future as to when
19 witness panels are going to be called.

20 Again, I take it from your remarks, that
21 strict adherence to the 70 days will probably not be
22 required, although you want everyone attempting to get
23 the documents 70 days in advance.

24 THE CHAIRMAN: Well, we have set some
25 minimum standards for what we feel to be fair for the

1 required, although you want everyone attempting to get
2 the documents 70 days in advance.

3 THE CHAIRMAN: Well, we have set some
4 minimum standards for what we feel to be fair for the
5 circumstances of this hearing and, as you are aware,
6 Mr. Freidin, this was arrived at after some lengthy
7 discussions at the preliminary meetings and that was
8 what the Board chose.

9 Now, the rules provide for us to derogate
10 from specific time limits where we feel it is
11 necessary, but the Board expects those time periods to
12 be adhered to by the parties, except where a problem
13 arises and, at that point, the Board should be spoken
14 to and, frankly, the Board will be dictated by what it
15 considers to be fair in those circumstances.

16 If we feel a party is being prejudiced or
17 deprived, or not given enough time, then you may find
18 that the breach of the rules will not be allowed and it
19 may not necessarily result in the panel not being
20 allowed to address the Board, but it may result in the
21 order being restructured so that that panel will not be
22 allowed to be called until the appropriate time has
23 been given, and you may have to restructure your case
24 slightly.

25 Again, the Board would look severely upon

1 upon circumstances whereby the rules are not followed
2 without good reason, and there is no back-up that can
3 be slotted into the time, if necessary, because
4 documentation with respect to the back-up has not been
5 served either.

6 We do not want to get into a position
7 where we are sitting here feeling that it is unfair to
8 allow the parties to testify because the appropriate
9 time period has not been given and, yet, we cannot fill
10 our time usefully with another panel because the
11 documentation with respect to that other panel also has
12 not been given.

13 MR. FREIDIN: My concern is, again, that
14 my client cannot predict accurately when the next panel
15 will be called.

16 To respond to your earlier comment, we do
17 not want to start serving material out of order because
18 what will happen, if you want to call the panel out of
19 order and you set them out, you can end up in fact
20 serving two or more at the same time.

21 THE CHAIRMAN: Again, I think we are
22 going to have to play it by ear to a certain extent.
23 If you do not know when the panels are going to be
24 called and you are calling them, then I can assure you
25 other parties, including the Board, will have similar

1 difficulties.

2 By the same token, you will not know how
3 long cross-examination is going to take of any panel
4 either, nor will the Board, and so I think we are all
5 going to have to play the game together, so to speak,
6 and adjust things so that it works in an orderly flow
7 but that no party is prejudiced.

8 Okay. I think, at least for the time
9 being, we will adhere to the earlier directives in
10 terms of the time limits, of the 70 days, 30 days and
11 10 days prior to calling the panel, and at least see
12 how that goes for the next little while. Once we get
13 into the actual evidence, if it appears it is not
14 working, the Board will entertain further suggestions
15 or make an appropriate ruling.

16 Now, ladies and gentlemen, we get to
17 the -- by the way, I think the Board is proposing,
18 during these sessions, to break for lunch at about
19 12:30 in the afternoon and, again, we are not going to
20 interrupt panels in mid-sentence, or witnesses in
21 mid-sentence. We would like, as much as possible, if
22 you could structure your testimony to at least
23 accommodate the breaks at a convenient point.

24 In other words, obviously, you will not
25 finish witnesses before we take breaks, necessarily,

1 but at least the Board is prepared to wait until there
2 is an appropriate gap in the evidence that would be
3 appropriate to break on.

4 The same thing goes at the end of the
5 days: We would like, in certain cases, to finish
6 certain witnesses, if they are in the midst of
7 cross-examination, and we may sit a little bit later,
8 if necessary, to accommodate that on a particular day.

9 When we break at lunch, we are proposing
10 a break of one and a half hours, from 12:30 until 2:00,
11 and that will allow people to either eat in the hotel
12 or elsewhere and perhaps get some fresh air before
13 going into the afternoon sessions, and we will try to
14 adhere to that as much as possible.

15 Now, with respect to the presentation of
16 evidence, this I suspect will be a matter of perhaps
17 some debate as to who goes first, who gets to
18 cross-examine first and that sort of thing.

19 I do not know if counsel have had an
20 opportunity to consider this question. Perhaps what we
21 will do is: We will introduce it now, and then, maybe
22 without resolving it totally, you might perhaps have
23 some conversations over the lunch hour, if there
24 appears that there is a lot of disunity about what the
25 possible solution might be.

1 Now, normally speaking, if this were the
2 type of hearing where the interests are well defined
3 and the parties are either on one side of the coin or
4 the other, we would probably follow the format set out
5 in Rules 47 and 48; that is, the applicant would
6 present its evidence in direct first, followed by those
7 parties represented by counsel in support, followed by
8 those parties not represented by counsel in support,
9 and then we would go to those parties opposed to the
10 proposal, beginning with the government agencies, then
11 municipal corporations, intervenor groups and
12 individual parties, and then follow the same format of
13 those not represented by counsels.

14 And some of those, such as regulatory
15 bodies, who do not take a position either in support of
16 or in opposition to the proposal, and then the Board's
17 witnesses, if the Board should itself call any
18 witnesses.

19 Again, the order for cross-examination
20 would follow a similar procedure as set out in Rule 48.

21 Now, obviously with respect to the
22 proponent's case, Mr. Freidin would call his witnesses
23 first and then there may be other parties -- and
24 examine his witnesses in direct examination, and then
25 there may be other parties who are in support of the

1 proposal who may wish to question those witnesses as
2 well.

3 And then there are parties who are
4 represented by counsel, and then there are parties who
5 are not represented by counsel who, again, may be in
6 support, and then there are members of the public at
7 large, again, who may wish to ask certain questions,
8 and then we get into the cross-examination.

9 On the face of it, do counsel and the
10 other parties present today see difficulties with the
11 indications given by various parties today of whether
12 they are in opposition or in support?

13 It seems that most of the parties present
14 were in a position to say that they were either largely
15 in support or largely in opposition to the proposal,
16 and there were only two or three parties, as I recall,
17 that indicated that they were opposed to certain parts
18 and would be, say, in support of other parts.

19 Those are the parties - I suppose like,
20 for instance, Mr. Reilly, think you indicated you might
21 be in that position - that might have to change sides
22 depending on the issues and what that particular panel
23 is dealing with.

24 So, I guess what I am suggesting is that
25 the Ministry would start off first in direct

1 examination, and I suppose we can arbitrarily toy with
2 some parties who would go next. Let's see what the
3 arguments are.

4 Mr. Cosman?

5 MR. COSMAN: Mr. Chairman, do you want to
6 hear submissions on this before you actually make the
7 proposal as to order?

8 THE CHAIRMAN: All right. That would
9 certainly be in order at this point.

10 MR. COSMAN: I will start off, if you
11 would like then.

12 My submission relates to the position of
13 the Minister of the Environment in this proceeding.
14 Your Rule 47, sub (2) and sub (4), provides that
15 government ministries would go before either parties,
16 either in support or in opposition to the proposal, and
17 it is not enough to say you are neutral in order to go
18 last.

19 Now, I have read the statement of the MOE
20 starting at page 356 at the preliminary meetings.
21 That's the position where they say they are not taking
22 a position, but I have also read other statements by the
23 Ministry of the Environment and its counsel.

24 I have read comments from the Review
25 Document, I have read the interrogatories and, in my

1 submission, it is apparent that the Ministry of the
2 Environment is not neutral nor should the Ministry of
3 the Environment be neutral on environmental issues. It
4 would be a sad day if the Ministry of the Environment
5 were neutral and not take a position on environmental
6 issues.

7 Now, I suspect, and we have heard, that
8 the MOE will be taking an active position throughout
9 this hearing; they will be cross-examining, they will
10 be presenting evidence.

11 It is hard to do that in a neutral way,
12 Mr. Chairman, and the MOE is here, as it is entitled to
13 be under the Act, but he is not here as amicus curiae,
14 he is not here to instruct you, he is not here to
15 advise you - you are an independent Board, as this
16 Board doesn't need to be told - he is a party making
17 submissions before you.

18 In that respect, the rules, I submit,
19 should apply to the position that the MOE -- the
20 position, I think in the order of things, that the MOE
21 should follow.

22 If, Mr. Hunter, for example, who opposes
23 the hearing under -- if the MOE under the rules should
24 go before Mr. Hunter, with respect to those parts of
25 the proposal where the MOE may support parts of the

1 undertaking, he should go in advance of us, for
2 example, or other parties.

3 But under the rules, it is very clear
4 that government ministries do not go after the other
5 parties, but your rule makes it very specifically clear
6 that they go before the other parties either in
7 opposition or in support.

8 My friend Mr. Hunter referred to the
9 indivisibility of the Crown which was quite amusing at
10 one of our presentations --

11 MR. HUNTER: And quite learned.

12 MR. COSMAN: Learned. But I think quite
13 clearly we are seeing that the Crown is divisible for
14 certain purposes in this proceeding.

15 THE CHAIRMAN: Mr. Campbell, do you want
16 to respond to any of that?

17 MR. CAMPBELL: I thought perhaps, Mr.
18 Chairman, if there were any others who had views to
19 offer on this matter, it might be appropriate if I
20 saved my remarks until you received all submissions.

21 I rather have a suspicion that my friend
22 to the right may have something to say.

23 MR. HUNTER: Mr. Chairman, if I could ask
24 your indulgence. I believe you want to call lunch at
25 12:30. I will be making some rather lengthy

1 submissions on this subject and I have formally
2 requested a senior government official to come here to
3 meet with Mr. Campbell before I make my submissions
4 because that may resolve some issues.

5 Let me just indicate that I will take the
6 view that if MOE does go last, that this will
7 constitute a substantial prejudice to my client.

8 THE CHAIRMAN: Very well. I think in
9 view of the fact that you anticipated that there may be
10 some difficulties with the proposed order and the
11 proposed neutrality of the Ministry, and you have taken
12 some steps to at least arrange some meetings to maybe
13 try and resolve these difficulties, that the Board
14 should certainly allow you the opportunity to canvass
15 what you can before we may be called upon to resolve it
16 for you. And so certainly we will hold it down until
17 after lunch.

18 Are you proposing to meet over the lunch
19 hour with this official, Mr. Hunter?

20 MR. HUNTER: Well, I can't undertake to
21 the Board or to Mr. Campbell. The documents have been
22 presented here which, to put it very mildly, leave me
23 cold, and we have to resolve the status of those
24 documents because I think there will be a substantial
25 argument before you, Mr. Chairman.

1 So the individual has said he will try to
2 be here by one o'clock. It is going to be very
3 difficult for him to do that, but certainly between
4 1:00 and 1:30 I am anticipating the opportunity to
5 meet with Mr. Campbell on this subject.

6 If we don't meet, if that individual
7 can't get here, then I will be prepared at two o'clock
8 to stand up and make submissions.

9 MR. CAMPBELL: I will meet with Mr.
10 Hunter in any event, Mr. Chairman.

11 THE CHAIRMAN: Right. If it turns out
12 that you do not have these meetings with this official
13 during the lunch hour, I take it that you will stand up
14 at two o'clock and make your submissions in any event?

15 MR. HUNTER: That is correct.

16 THE CHAIRMAN: Probably meet later in the
17 day at some point with this official and Mr. Campbell,
18 and then maybe we can try and resolve that issue, if
19 possible, tomorrow.

20 MR. HUNTER: Fine, Mr. Chairman. Thank
21 you.

22 THE CHAIRMAN: Is there any other parties
23 that want to make any submissions with respect to what
24 you have heard from the last few minutes regarding the
25 order of presentation?

1 Perhaps we can hear from some of the
2 other parties and await until after lunch when Mr.
3 Hunter makes his submissions.

4 Mr. Williams?

5 MR. WILLIAMS: Mr. Chairman, relative to
6 order of presentation, moving beyond the role to be
7 taken and the position of the presentation of evidence
8 by the Ministry of the Environment, at first glance
9 certainly reliance upon Section 47 of your Rules of
10 Procedure seem to be an appropriate way in which to
11 proceed even in regard to this broader-based hearing,
12 rather than dealing with specific issue-type of
13 undertaking.

14 But, Mr. Chairman, there is one concern
15 that I do have, in that while the categorization of the
16 parties and the order in which they are proposed to
17 present themselves are set out in Rule 47, it seems to
18 me that there is another category that doesn't show
19 itself which I think may have some bearing as to how
20 parties who are part-time parties, rather than
21 full-time parties, how their positions are affected in
22 this process.

23 It seems to me that with regard to
24 categories 2 and 4, where there is counsel appearing
25 either in support of or in opposition to a proposal on

1 behalf of a certain party, that a further distinction
2 should be made between counsel representing full-time
3 parties and part-time parties because, as it was said
4 here earlier today, the part-time parties are, to some
5 extent, in a more prejudiced position as far as having
6 full and complete access to the proceedings, not being
7 able to be present for whatever reason - whether it is
8 financial limitations or for other reasons - not able
9 to participate in the hearings on a day-to-day basis,
10 and it has even been suggested earlier this morning
11 that those part-time party participants be further
12 penalized, if you will, by not having access to all of
13 the documentation even if they are not attending on a
14 daily basis.

15 These are the types of adversaries that
16 part-time parties may be confronted with, but full-time
17 parties would not experience.

18 And because of that situation, it seems
19 to me too, because they have perhaps those difficulties
20 to work with, that it would be advantageous to those
21 parties as part time to take a step back from the
22 full-time parties as far as the order in which they
23 present their evidence, so that a distinction perhaps
24 should be made to give some advantage to part-time
25 parties to at least hear the submissions of all of the

1 full-time parties in that particular category, because
2 before the part-time parties in that category are asked
3 to bring forward their witness panel or whatever and
4 make -- produce evidence or to cross-examine, because I
5 think that would give the part-time parties a better
6 opportunity to have a fuller appreciation of what's
7 transpired from hearing what the full-time parties had
8 to say.

9 THE CHAIRMAN: Well, I think, Mr.
10 Williams,.there is some merit in what you say because
11 certainly the Board contemplated in formulating these
12 rules that those parties who were in the category of
13 the lay public unrepresented by anybody, they would
14 come towards the end of the process, both in direct and
15 in cross-examination, in order to give them the
16 opportunity of hearing what was said and asked and
17 answered by the other parties represented by counsel in
18 the hope that some of their questions or some of their
19 concerns would be addressed by the other parties.

20 And that was one of the reasons why you
21 see that those parties not represented by counsel
22 opposing the proposal were sort of put in at the end of
23 the process to some extent.

24 I think the Board is sympathetic with
25 some of your concerns and it may prove to be

1 advantageous for some of the part-time parties to have
2 the opportunity of listening to the questions and the
3 answers posed by the full-time parties prior to being
4 called. I think the Board will give some consideration
5 to your submission in that regard.

6 One of the things we have been forced to
7 do, because of the logistics of this undertaking, is to
8 ensure that the Ministry's case is put in at one place
9 essentially, and that means that the Ministry will be
10 cross-examined and re-examined at this location. Even
11 if the part-time parties cannot be here on a regular
12 basis, nevertheless, if they wish to cross-examine
13 witnesses called by the proponent, they will be obliged
14 to come here to do that.

15 That is one of the reasons why we are
16 trying to make sure that outlines of the Ministry's
17 case is put out in advance so that those parties in
18 that category can at least identify the witnesses that
19 they are most interested in, in terms of the
20 proponent's case, and be here to either hear their
21 evidence in direct or cross-examine them.

22 Do any other parties have any comments on
23 the proposed order?

24 MR. EDWARDS: Mr. Chairman, I will just
25 echo Mr. Hunter and the gentleman to my right. It is

1 our position that the Ministry of the Environment ought
2 cross-examine before the other parties. The Ministry
3 has the resources available to mount an effective focus
4 and cross-examination on certain environmental issues,
5 and the smaller parties just don't have that resource
6 available.

7 It is our position that our
8 cross-examination will be a much more focused one, if
9 we had the benefit of hearing what's gone on before.
10 Certainly, the financial implications of a launching
11 into a cross-examination are extreme, and if areas have
12 been dealt with by the Ministry of the Environment,
13 that would allow us to spend a lot less of our client's
14 time and money in dealing with those issues.

15 MR. CAMPBELL: Just a question of
16 clarification, Mr. Chairman. I take those remarks not
17 to mean that the suggestion is that we should go ahead
18 of all parties, but that we should go ahead of parties
19 that classify themselves as being in opposition; is
20 that correct?

21 MR. EDWARDS: That is correct.

22 MR. CAMPBELL: Thank you.

23 MR. COSMAN: For a point of
24 clarification, Mr. Chairman, that presumes that the
25 Ministry of the Environment will be opposing the whole

1 document. If there are parts of it that he supported,
2 then he would go in advance of the parties who support
3 it.

4 THE CHAIRMAN: I take it that is what you
5 are proposing?

6 MR. COSMAN: Yes, that's right, I am.

7 MR. HUNTER: Mr. Chairman, I have
8 difficulty. Mr. Campbell is an excellent counsel, I
9 don't think he should get three shots at it.

10 MR. CAMPBELL: I think it is a terrific
11 idea.

12 THE CHAIRMAN: Well, without commenting
13 on Mr. Campbell's expertise, I think we are going to
14 break for lunch.

15 Obviously we are going to come back and
16 address this more fully this afternoon, and I suspect
17 that before we get it all sorted out it may take up a
18 good portion of the afternoon.

19 But this is one of the procedural issues
20 that I think we ought to canvass and solve at the
21 outset of this hearing.

22 The Board will break until two o'clock.
23 Thank you.

24 ---Luncheon recess taken at 12:30 a.m.

25 ---Upon resuming at 2:00 p.m.

1 THE CHAIRMAN: Thank you, ladies and
2 gentlemen. Please be seated.

3 I trust all of you found a neat place to
4 go for lunch on your first of many lunches.

5 Ladies and gentlemen, we are now going to
6 continue on with the discussion with respect to the
7 order of presentation.

8 And I think at this point in time we will
9 call on Mr. Hunter who indicated he has a presentation
10 to make to the Board with respect to this topic.

11 Mr. Hunter?

12 MR. HUNTER: Mr. Chairman, thank you.

13 I had the opportunity over lunch to meet
14 very briefly with an official of the provincial
15 government and that official met with Mr. Campbell. I
16 think some concerns were sorted out, others were not.

17 THE CHAIRMAN: Is there any secret about
18 who this official is?

19 MR. HUNTER: Oh no, no. Mr. Krasnik,
20 Mark Krasnik who is Executive Co-Ordinator for the
21 Government Office of Native Affairs Directorate.

22 THE CHAIRMAN: Very well.

23 MR. HUNTER: I can't give you the
24 accurate Ministry it relates to.

25 The basic position that we would like to

1 make is that the Ministry not be in last place. Mr.
2 Campbell, I am sure, will ably argue against our
3 concerns.

4 I am going to approach it as a common
5 sense issue. No position neither for nor against the
6 proponent, and I am trying to understand what that
7 means.

8 On one hand it could mean that the party
9 has no material interest in the proceedings or in the
10 findings of the decision-making. On the other hand,
11 that the party has no concern with the proceedings or
12 the findings or the rulings, as distinct from a
13 material interest. The party has no disagreement with
14 those parties being either for or against, or in this
15 instance, with the proponent. And, on a more practical
16 level, that the party is there to at least maintain a
17 watching brief; they are there to obtain information
18 for the purposes of advising a client in a matter not
19 usually -- not being dealt with pursuant to that
20 hearing.

21 It seems to me that when someone opts to
22 take no position that they are, at least as a matter of
23 perception, saying that our role is very limited in
24 this hearing. They are obviously not required to
25 divulge why they are at the hearing or why they have an

1 interest in that hearing, but I think it would be fair
2 to say that if someone adopts that position, then they
3 will not be materially adverse or materially supportive
4 of any other party who is in that hearing.

5 And I think, Mr. Chairman, there is a
6 very practical reason for that association. Any other
7 party must know what it is that they are addressing,
8 what it is they will deal with in cross-examination,
9 re-examination and, obviously, in leading their own
10 evidence.

11 And if there is a party that says: I
12 have no position, that conveys very strongly, at least
13 to me, that they will not be engaging in that hearing
14 in such a way that there will be a material impact on
15 my client's interest, either adverse or positive. And
16 that is the fundamental concern I have.

17 I think I want to test this against the
18 reality and I am not going to -- I have a choice, Mr.
19 Chairman. I could attempt to insert this Review as an
20 exhibit. I gather it has not been entered as an
21 exhibit at this point in time.

22 THE CHAIRMAN: I do not believe so.

23 MR. HUNTER: If my colleagues will allow
24 me, I will speak in generalities about positions in
25 there, and if they object to that, then I will seek to

1 enter it as an exhibit at this point in time.

2 It seems to me that on reviewing that
3 document that there are a substantial number of
4 ministries who very comfortably fall into the no
5 position as I have tried to categorize it; that is, Mr.
6 Chairman, they have no interest, they have no comments,
7 they have a perfunctory involvement with this process.

8 There are some ministries who have
9 exhorted absolute support for the Ministry of Natural
10 Resources, Ministry of Mines & Northern Development
11 being one. They are absolutely laudatory in their
12 comments, until I realized, of course, that it was MNR
13 who wrote the review of their position.

14 Then there are other parties who suggest
15 some degree of concern, criticism, suggestion of the
16 class assessment document. In the case of the Ministry
17 of Environment, it seems fair to say that there are two
18 substantial areas where they have drawn adverse comment
19 to that document.

20 Of more material concern are the
21 suggestions raised by the Office of Native Affairs
22 Directorate. And it seems to me - and I beg my
23 colleague's indulgence - that those comments to a
24 certain degree, and this will be argued, reflect the
25 position of the Attorney General in his policy

1 statements which are also included in that document.

2 I am very concerned as ought the native
3 communities to be concerned with the Ontario Native
4 Affairs Directorate's position, with the question of
5 whether they will advance that position, and the
6 question as to what understanding, if any, that they
7 may come to with the Ministry of Natural Resources in
8 relationship to their position.

9 My concern is that the no position may be
10 seen to jeopardize the Native Affairs Directorate's
11 opportunity, choice, with respect to advancing those
12 positions or, to put it more bluntly, with our ability
13 to pressure that Directorate in order to assert
14 interests on our behalf in this hearing.

15 I do not ...

16 THE CHAIRMAN: Would you mind just
17 reviewing that last statement again. You feel that the
18 Ministry's no position...?

19 MR. HUNTER: The Ministry of
20 Environment's no position.

21 THE CHAIRMAN: The no position, if that
22 is what they are going to take, may jeopardize the
23 Native Affairs Directorate in what way?

24 MR. HUNTER: Well, I am arguing that, Mr.
25 Chairman, in the context of what I would understand the

1 range of involvement of counsel would be, if you were
2 to rule that they were in a no position; that is, are
3 they to be full participants in this hearing, whose
4 interests are they advocating when they engage in
5 cross-examination, are they there for the Ministry of
6 Environment, if so, in relationship to what positions.
7 Are they for other ministries who may have adverse
8 comments.

9 THE CHAIRMAN: Well, is there not, for
10 the Ministry, a multitude of roles that they might have
11 to play? For instance, as far as the Government Review
12 is concerned, they are the co-ordinators of that
13 Government Review. Under the Act, they co-ordinate the
14 comments of the other reviewers and produce a document
15 which is then submitted to public scrutiny, but doesn't
16 the Ministry also appear in their own right as the
17 Ministry of the Environment in terms of that Ministry's
18 own mandate?

19 MR. HUNTER: That is what I understood my
20 friend to say.

21 THE CHAIRMAN: And I also understood him
22 to say, I think during the preliminaries, that he was
23 going to represent, to some extent, other ministries--

24 MR. HUNTER: That's correct, Mr.
25 Chairman.

1 THE CHAIRMAN: --who were not otherwise
2 represented in their own right, if I interpreted what
3 you said earlier, Mr. Campbell.

4 MR. CAMPBELL: I think that is generally
5 correct, Mr. Chairman, although I would like to
6 emphasize once again, as I did previously, that there
7 may well be circumstances where other ministries, in
8 respect of which we are playing the co-ordinating
9 role - I just assume they are aware what is happening
10 in this hearing - those other ministries may well have
11 interests which are distinct and different from the
12 ones of the Minister of the Environment and that would
13 be the kind of circumstance where they would have to
14 consider, if they wished to become a party to these
15 proceedings, to be represented differently.

16 I obviously can't represent both sides of
17 an issue where there is a conflict between the Ministry
18 of the Environment and another agency on a particular
19 issue.

20 That is what I thought I had explained to
21 Mr. Hunter previously on this very matter.

22 THE CHAIRMAN: Okay. Mr. Hunter, without
23 interrupting you further - and I will let you go on in
24 just a minute - was it your understanding from your
25 discussions with Mr. Campbell that with respect to his

1 representation of the Ministry of the Environment's
2 position alone that he wished to take the no position
3 as to that ministry's mandate?

4 MR. HUNTER: In fairness, Mr. Chairman,
5 we did not discuss Mr. Campbell's role vis-a-vis the
6 Ministry of Environment. My concern in discussion with
7 him goes to the relationship of his role as counsel to
8 the Government Review and to evidence that is in there
9 to my client's interests.

10 THE CHAIRMAN: In circumstances where he
11 may be speaking for other ministries, not particularly
12 and separately represented?

13 MR. HUNTER: Well, let me try once more.
14 My fundamental concern is in part a question of
15 perception and in part a question of perhaps undue
16 concern.

17 Mr. Campbell is saying we are neither for
18 nor against the assessment. I don't understand what
19 that position means. I don't understand how you can
20 have that role, given the nature of the comments which
21 have been made in the Government Review with respect to
22 that assessment document unless, unless those agencies
23 which previously had expressed some concerns are now
24 saying we are not concerned.

25 Because if they are concerned, then

1 certainly, at least in the case of MOE, I am presuming
2 their counsel, Mr. Campbell, will be advancing certain
3 issues.

4 I don't know what his relationship is
5 going to be in relationship to the other government
6 agencies.

7 So in abundance of caution, Mr. Chairman,
8 I am raising this issue and I am saying: There is a
9 question of perception, there is a question of
10 fairness. MOE should be required to take a position
11 and I am presuming a position in opposition to that
12 assessment, and that would be my first submission.

13 If that is not the case and you don't
14 find for that submission, Mr. Chairman, then I would
15 urge that Mr. Campbell be severely constricted in his
16 role as having a non-position, and I go back -- and the
17 reasons for that analysis is found in my initial
18 comments, which are that fairness would suggest that if
19 he has a position, that that be identified so that we
20 may prepare for it.

21 If he is for it, fine; if he's against
22 it, fine. I don't understand the no position.

23 Thank you, Mr. Chairman.

24 THE CHAIRMAN: Thank you.

25 MRS. KOVEN: Mr. Hunter, could you tell

1 me what is the position, as you understand it, of the
2 Native Affairs Director or Directorate?

3 MR. HUNTER: I understand that position
4 to be critical of so aspects of the class assessment
5 document -- proposed class assessment document because
6 that document does not substantially incorporate native
7 concerns into it.

8 THE CHAIRMAN: Well, Mr. Campbell, would
9 you like to respond to Mr. Hunter's submissions?
10 Perhaps, before you do that, we will hear from another
11 party.

12 Mr. Castrilli?

13 MR. CASTRILLI: Yes, thank you, Mr.
14 Chairman.

15 I didn't want Mr. Campbell to be misled
16 with regard to my comments in support of Mr. Hunter and
17 the position he had put before you this afternoon, and
18 also in support of a position that was put earlier
19 today by Mr. Edwards.

20 I too am a bit confused by the position
21 of the Ministry of Environment when it says that it is
22 taking a position neither for nor against the
23 assessment.

24 The existing MOE Review tells me that the
25 Assessment Branch of the Ministry of Environment, one

1 other branch of that Ministry, is taking the position
2 that it believes and it feels that the MNR
3 environmental assessment is technically deficient and
4 does meet the requirements of Section 5(3) of the
5 Environmental Assessment Act.

6 For that reason, I do not understand why
7 the Ministry takes the position and says that it is
8 neutral.

9 Now, I also understand - and Mr. Hunter
10 has alluded to the fact - there is also what may well
11 become what is known as the "supplementary MOE Review".
12 And that document may raise questions about what MOE's
13 position is and whether it is different than what it
14 has said, or from the position it took in the original
15 MOE Review of 1987.

16 I have not seen that document, I do not
17 know what its contents are, and I obviously cannot
18 comment further on it. But I think it would be helpful
19 to both the Board and to the parties to have that
20 document so that they might comprehensively discuss
21 that particular issue.

22 Generally, it is the position of my
23 clients that as a party adverse to the position of the
24 proponent, we should be entitled to cross-examine only
25 after all those parties who are either neutral or who

1 support the proponent have cross-examined.

2 We take that position because any other
3 approach would have us cross-examining before parties
4 who either are in support or may be in support of the
5 proponent on a particular panel and would, therefore,
6 deny us the opportunity to fully cross-examine and deal
7 with the case we have to meet.

8 For those reasons, I continue to have
9 difficulty with Mr. Campbell's position and, in the
10 circumstances, would support Mr. Hunter's motion.

11 THE CHAIRMAN: Are there any other
12 parties that would like to speak to Mr. Hunter's
13 emotion before we get to Mr. Campbell?
14 Sir?

15 MR. COLBORNE: Very briefly, Mr.
16 Chairman, I want to support what Mr. Hunter has said.
17 My clients are not a public interest group, they are
18 very much a private interest group which most of the
19 groups here are. We are concerned with the effects of
20 timber management on Crown lands, on status Indians
21 and, particularly, on Indian communities.

22 There is only one small corner of the
23 Government of Ontario that deals with this area which
24 is the area of my client's concern. That small corner
25 was recently moved from the Ministry of Natural

1 Resources to the Ministry of the Attorney General.

2 That small corner has written -- as appears at page 107
3 of the document that Mr. Hunter has referred to, has
4 written and said that there are some concerns that they
5 have noted, and in that letter appears points which
6 could have been made by my clients.

7 They say: "This new office within the
8 Attorney General's Department of the Ministry has said
9 we are concerned about the effects on treaty rights and
10 we are concerned about the effects on existing native
11 communities."

12 Now, I don't see here much of a reply to
13 that, and if Mr. Campbell is standing and saying:
14 Well, we are neutral - I don't want to put words in his
15 mouth, I don't remember exactly how he phrased it. I
16 have not reviewed the transcripts - who then is here
17 speaking for this one little corner of the Government
18 of Ontario which deals with the issue that my clients
19 are here to deal with and here to deal with
20 exclusively?

21 THE CHAIRMAN: Well, I am sure we will
22 get Mr. Campbell's reply to your comments shortly.

23 MR. BABCOCK: If I could just join in in
24 support of Mr. Hunter's position. I am somewhat
25 different in interests than most of the groups who have

1 spoken in support of Mr. Hunter, but my concern is
2 really a technical concern as to how Mr. Campbell can
3 stand up and say: If there is a conflict between the
4 position of the Ministry of the Environment as a
5 Ministry and the position of the Ministry for whom it
6 acts as the co-ordinator, then that will be dealt with.
7 And out of the other side of his mouth he says the
8 Ministry of the Environment takes no position.

9 That is inherently a contradiction and
10 shows that Mr. Campbell is not coming clean when he
11 says the Ministry of the Environment takes no position.

12 THE CHAIRMAN: Well, okay. I understand
13 your concerns and I certainly understand that you may
14 wish to support Mr. Hunter's motion and not - I think
15 at the beginning and at the outset I would like to try,
16 where possible, to keep the rhetoric and editorializing
17 to a minimum in terms of what Mr. Campbell or any other
18 party's motivations may be.

19 Let's give the parties at the outset an
20 opportunity to put forward their positions based on
21 some facts that they can present to the Board, or
22 argument that they can make to the Board, without
23 getting into, not name-calling but, interpretations
24 that can be placed on what people say in an adverse
25 light. Let's try and keep the hearing at least on the

1 first day off to a acri -- friendly start.

2 I am sure we will get into situations
3 when we get more involved in the evidence and the
4 positions of the parties are perhaps more opposed to
5 each other, that you will have a chance to say what you
6 want to say within limits.

7 Anybody else?

8 Mr. Campbell?

9 MR. CAMPBELL: Thank you, Mr. Chairman.

10 We have Mr. Hunter's motion that, I think
11 it has its roots in Mr. Cosman's remarks, so I will try
12 and address all of them together.

13 There are just a few matters that I would
14 like to clarify that have been referred to by my
15 various friends.

16 The first is that there is no
17 supplementary review. I will advise the Board that
18 there is some correspondence which flows from the
19 correspondence which is normally appended to the
20 Government Review - the Board will be familiar with
21 that correspondence, it is included at the end of the
22 review. There is some correspondence that flows from
23 that.

24 As I explained to my friend, Mr.
25 Castrilli earlier today, I am taking steps to ensure

1 that I have all of that correspondence in my hands and
2 I intend to provide it to all the parties, but I don't
3 like doing that on a piecemeal basis and with
4 incomplete information.

5 They will all have all of that additional
6 correspondence as soon as I am satisfied that I have it
7 all and copies can be made.

8 Now, I would support my friend Mr.
9 Hunter's submission to this extent, that I do view it
10 as being a matter on which he is unduly concerned.

11 This whole question arises from the
12 Board's Rules and the Board there, in its Rules 47 and
13 48, sets out a number of categories which will be used
14 to determine order of cross-examination and
15 presentation of evidence.

16 Let me first say that, as I understand
17 the position now in terms of what's been argued as to
18 where we should fall, it seems clear that all of the
19 arguments are aimed at having our cross-examination and
20 appearances fall after those parties who are in favour
21 and before those who are opposed.

22 The Board's rules, however, contemplate
23 that having gone through that gradation, there is a
24 group described this way, and I will just take the
25 words from Subsection (6) of Rule 48:

1 "Those parties, such as regulatory
2 bodies, that do not take a position..."

3 rather,

4 "...that take a position --"

5 I will start over:

6 "Those parties, such as regulatory bodies,
7 that do not take a position in support of
8 or in opposition to the proposal."

9 Now, my friends have consistently described that as
10 saying that the implication of that is that we are
11 neutral.

12 The Minister of the Environment is not
13 neutral on this matter. The Minister of the
14 Environment has a very specific interest in ensuring
15 the environmental aspects of this matter are adequately
16 considered and, at the end of the day, that
17 environmental concerns are adequately addressed. That
18 is not a position of neutrality on that matter.

19 But the rule doesn't say neutrality, the
20 rule speaks to "support of or in opposition to the
21 proposal".

22 We say we are not in support of this
23 thing being approved in its present state nor are we
24 opposed to it being approved in its present state.
25 What we are saying is that we have several jobs to do

1 here.

2 Now, one of those jobs is going to be to
3 ensure that there is adequate definition within the
4 planning process outlined in the documentation that's
5 coming along. We are seeing considerably more material
6 coming out of the proponent, we want to be sure we
7 understand that, that it clearly states how the
8 proposal is going to work and we are going to test it
9 to achieve that end.

10 We are going to test the data that goes
11 into it, how the decisions are going to be made, who
12 makes them, and what mechanisms will be put in place to
13 ensure consistent decision-making throughout the
14 planning process, who ensures that they are properly
15 implemented, and that results are monitored and what
16 triggers the bump-up provisions.

17 We say that the Timber Management process
18 must respond appropriately to environmental concerns
19 and policies, and we will test the evidence in that
20 regard.

21 But merely going into these areas and
22 testing the evidence, ensuring we understand it fully,
23 ensuring that it is well-founded, does not mean that we
24 oppose the project or that we support it. It means
25 that we are going to make sure that the information

1 base in front of this Board is adequately tested.

2 Now, if my friends want to call that
3 neutral, they are free to do so, but that's how we
4 would use the term.

5 Now --

6 THE CHAIRMAN: Let me just interrupt you
7 there for a minute just to hopefully clarify, as
8 opposed to confuse, what the Board had in mind by
9 placing the category of regulatory bodies that did not
10 take a position in support of or in opposition to the
11 proposal at the end.

12 The Board's feeling - and it did not
13 specifically address its mind to this particular case
14 when formulating these rules - and you must appreciate,
15 I think, that most applications which come before the
16 Board are both site-specific and project-specific, so
17 that the parties generally take a position either in
18 opposition or in favour.

19 Now, the feeling of the Board at the time
20 this rule was passed and enacted was that the Ministry,
21 being a regulatory body, acts to some extent in the
22 same capacity as the Board itself. It has a mandate -
23 just to use a very simple phrase - to protect the
24 environment.

25 The Board itself looks at the case after

1 hearing all of the evidence put forward by the parties
2 and it makes its decision in accordance with what it
3 deems to be the public interest.

4 And, therefore, it was felt that if the
5 Ministry put forward its submissions without having the
6 opportunity of hearing the submissions of other
7 parties - which could colour the Ministry's positions -
8 that it would be better if the Ministry, which has that
9 broad mandate - I am talking specifically of the
10 Ministry of the Environment as an example - came at the
11 end. It is a regulatory entity, it does have a mandate
12 which accords with a public interest and broadly to
13 protect and conserve the environment and, as a
14 consequence, it was felt that it would be better if it
15 had the opportunity to hear what other parties had to
16 say about the application before it put in its own
17 evidence. That is why that category was there.

18 Now, as well as saying that, there can be
19 many instances where the Ministry, because of its
20 specific expertise in environmental matters, may wish
21 to take a specific position in support of or opposed to
22 the particular application before it.

23 And, in that sense, it might also fit in
24 to Clause 47(4), which is those parties represented by
25 counsel opposing the proposal, beginning with the

1 federal and provincial government agencies, or Clause
2 (2) of Section 47 which, again, are those parties
3 represented by counsel in support of the proposal
4 beginning with the federal and provincial government
5 agencies.

6 I think what I am trying to say, Mr.
7 Campbell, is that the Board anticipates that in various
8 cases the Ministry may play more than one role and it
9 may be in support of an application; in which case it
10 may be better if it goes at a particular point in the
11 proceedings. It may be opposed to the application, in
12 which case it goes at a different point, or it may not
13 take a position in a particular application, in which
14 case the Board felt it would be better for it to go at
15 the end, which would sort of put it in the position of
16 having had the input from everybody else.

17 Now, if I understand what you are saying,
18 you really fall into all of those categories, to some
19 extent, in the sense that you might support certain
20 aspects, oppose certain aspects, and maybe not be in a
21 position to express a position on certain aspects.

22 Would I be correct in this last
23 statement?

24 MR. CAMPBELL: I would say, Mr. Chairman,
25 that that position is accurate in my client's case as

1 it is in all the other parties who are here.

2 I cannot conceive of any party here who,
3 in a matter of this size, is wholly in support or
4 wholly opposed or wholly indifferent to each and every
5 matter in the proposal, and I don't pretend that we are
6 any different than that.

7 But I think in your first remarks - and
8 it really comes back to the role of the Minister in
9 these proceedings - that really you characterized it
10 very well, that in fact the Ministry has regulatory
11 responsibilities relating to the environment, it has
12 specific regulatory responsibilities relating to the
13 administration of the environmental assessment process,
14 and it has, therefore, in my submission, all the
15 characteristics that are contemplated by Rule 47(6) and
16 Rule 48(6).

17 And I think it is really the regulatory
18 aspect of it, and the whole purpose of the legislation
19 which the Minister of the Environment administers, that
20 really puts them in that unique position.

21 Every party here will say that, to one
22 extent or another, it is representing the public
23 interest, and that's right, they are.

24 But it is the Ministry of the
25 Environment -- the Minister of the Environment who,

1 under this legislation, is required to administer this
2 Act for the purpose of the betterment of all of the
3 people of the Province of Ontario in whole or in part.

4 That's a statutory responsibility they
5 are given. That's what the purpose of the legislation
6 is, and the Minister of the Environment has a
7 responsibility for that legislation.

8 Now --

9 THE CHAIRMAN: I think it gets fuzzier,
10 Mr. Campbell, in terms of your representing other
11 ministries.

12 MR. CAMPBELL: Mr. Chairman, I thought I
13 had clarified that matter when I was asked a specific
14 question by Mr. Hunter last time in Thunder Bay.

15 The role that I am playing with respect
16 to the other ministries is, in effect, a continuation
17 of the review responsibilities.

18 There is a co-ordination role in
19 preparing the review that the Minister is responsible
20 for, and when it goes on to the hearing, to the extent
21 that I am doing anything with respect to the other
22 ministries, it is in effect continuing that role.

23 But the positions that other ministries
24 may take, or the Native Affairs Directorate may take,
25 are their positions.

1 THE CHAIRMAN: Okay. Well let's clarify
2 that part of it so that maybe that may help clear up
3 some of the confusion.

4 What happens when an issue that is
5 commented on by, say, one of the other agencies comes
6 before the Board: Will they be presenting the evidence
7 themselves? Who will be calling witnesses for them;
8 will it be you, will it be counsel for --

9 MR. CAMPBELL: Well, I don't think I can
10 answer that question in the abstract, Mr. Chairman.

11 What I can say is that other ministries
12 and agencies will be aware of what is going on in the
13 hearing as it develops.

14 If they choose to become a part and call
15 evidence on a particular matter, I will have to find
16 out whether that evidence, or the position that they
17 are taking in respect of that matter, whether there
18 will be a perception that it would be in any way in
19 conflict with my representation of the Minister of the
20 Environment, and that conflict would have to be dealt
21 with in the usual way, if it existed at all.

22 If there is no conflict, I might well end
23 up calling --

24 THE CHAIRMAN: But what order would those
25 other agencies place in this packing order?

1 MR. CAMPBELL: If my friend Mr. Hunter
2 was successful in his bid, to use his words, to
3 pressure the Native Affairs Directorate to come in in
4 support of his position in opposition, then that Native
5 Affairs Directorate would have to appear, according to
6 the Board's Rules, in some order of opposition in the
7 opposition group.

8 The Minister of the Environment is not
9 saying it is in support of or in opposition to. That's
10 the essential point that I want to get across. That
11 does not say we don't have environmental
12 responsibility.

13 THE CHAIRMAN: Okay, but we may be
14 arguing some degree of semantics here. When you say
15 you are not in support of or in opposition to the
16 undertaking or the proposal, I take it by that you mean
17 you are not one way or the other.

18 There will be issues, though, I would
19 suspect, upon which you will be opposed and other
20 issues upon which you will be in support as the issues
21 come out.

22 What you are saying essentially, I think,
23 is that you are not taking a position either way on the
24 application itself, but there will be components of the
25 application upon which the Ministry will take a

1 position?

2 MR. CAMPBELL: The question that's before
3 you now, Mr. Chairman: That everyone out there can
4 answer this, people who are generally in support or
5 generally in favour of the application.

6 I say, on behalf of the Minister of the
7 Environment, that we are not now taking a position in
8 support of or in opposition to the application. That's
9 the essential feature under the Board's Rules.

10 THE CHAIRMAN: Because you are a
11 regulatory body, essentially?

12 MR. CAMPBELL: That is correct. The
13 Minister of the Environment has particular and unique
14 responsibilities that do not attach to any other party
15 in these proceedings.

16 THE CHAIRMAN: Which is why, frankly,
17 there is a separate category for those type of
18 regulatory agencies that have this broad statutory
19 obligation. That is somewhat different than the other
20 parties who can take a position either for or against,
21 either in general or in particular.

22 MR. CAMPBELL: That's exactly what we
23 contemplated when we read the rules. That's what they
24 said to us, Mr. Chairman, and that's why we say we
25 belong in that category.

1 THE CHAIRMAN: Well, Mr. Hunter, just to
2 get back to you for a minute.

3 You have heard Mr. Campbell's response
4 with respect to how he perceives he would be
5 representing other agencies rather than MOE.

6 How do his comments or his response --
7 how does that sit with you, in view of your original
8 motion?

9 MR. HUNTER: Well, I think, Mr. Chairman,
10 I am still very uncomfortable. There is no point in
11 reiterating.

12 I was much more fascinated with his
13 comments as to the authority of the Minister in terms
14 of the MOE. I don't see any specific provision in this
15 Act - and if I misspeak myself, I am sure my friend
16 will correct me - that extends to the Minister the kind
17 of authority which is talked about, for example, in the
18 Environmental Protection Act, and the Minister has this
19 administrative control with respect to the betterment
20 of the environment.

21 What I don't understand is where the
22 Minister obtains the authority in an adversarial
23 proceeding to somehow sit in judgment on all of the
24 other parties and to test their evidence, and for what
25 purpose. I see that as a substantial interference.

1 THE CHAIRMAN: I am not sure the Ministry
2 is sitting in judgment on all the other parties. I,
3 frankly, thought that was the role of the Board.

4 MR. HUNTER: Well, I did too. The words
5 that were used by my friend is to test the proposal, to
6 test the data, to test the decision-making, and to test
7 the indications or conditions of bumped-up provisions,
8 and to test the evidence and the information.

9 That's exactly correct, Mr. Chairman, I
10 thought that was your rule, not the Ministry's role.
11 And if he is to appear as counsel to the Board, then
12 that should be his defined responsibility.

13 THE CHAIRMAN: Well, I do not think there
14 is in any doubt in the Board's mind who has the
15 decision-making or judgment capability in terms of this
16 proceeding, but I also feel that the Ministry of the
17 Environment generally has a regulatory type of mandate
18 and that certainly, I think, is the perception of what
19 the Ministry does, in terms of this particular Ministry
20 it is interested in preserving and conserving the
21 environment for the whole of Ontario--

22 MR. COSMAN: Mr. Chairman? Sorry.

23 THE CHAIRMAN: --and it is very much a
24 regulatory body in that context.

25 Mr. Cosman?

1 MR. COSMAN: Yes, Mr. Chairman, if I may,
2 arising out of that discussion that has taken place.
3 There are two points I wish to make.

4 Firstly, Mr. Campbell talks about the
5 responsibilities of the Minister as co-ordinator. We
6 have to remember that they are separate, distinct
7 responsibilities and you have, as you know - and this
8 Board knows - a unique, distinct responsibility to
9 determine these issues on the evidence that is before
10 you.

11 The Minister is not here to clarify or
12 test matters for you. They have a body, they have a
13 role to play, and it is set out in the statute, but we
14 are now into a hearing as Mr. -- and it is adversarial.

15 At this particular time, we have parties
16 who have interests. If one were to read that
17 particular subsection as meaning the MOE at all times,
18 in effect, you are taking the MOE - who is a party
19 before you - and putting them in the position of an
20 advisor or counsel to you so that he can up wrap-up the
21 case for you, test the evidence and present his case
22 last. Now, I just submit that that's not the scheme of
23 the legislation.

24 And, in this particular, case where the
25 Ministry has taken strong positions, it is not open for

1 the Ministry then to stand up and say: I take no
2 position, or we are not going to be taking a position
3 in support or against. And I think it is quibbling to
4 suggest that this is something different from
5 neutrality.

6 THE CHAIRMAN: Mr. Cotton?

7 MR. COTTON: I certainly second Mr.
8 Cosman's comments. It seems to me that Mr. Castrilli
9 put the only specific proposal on the table when he
10 said that if the Ministry - and I may be summarizing
11 your comments wrongly, you can correct me - if the
12 Ministry is speaking out of both corners of its mouth;
13 that is, they are in support and they are in
14 opposition, but really they would like to be the nice
15 guys and honest brokers, why do they not pick the
16 midpoint; that is, be the last person to call evidence
17 in support and the first person in opposition.

18 I believe that's what I understood of the
19 other gentleman, I don't know his name. It seems to me
20 that that would be a reasonable compromise to get the
21 Ministry into this process as it is designed.

22 THE CHAIRMAN: So what was the proposal,
23 that they should be the last to call evidence?

24 MR. COTTON: As a supporter.

25 THE CHAIRMAN: As a supporter, and the

1 first...?

2 MR. COTTON: In opposition.

3 THE CHAIRMAN: In opposition.

4 MR. COTTON: More properly, I guess
5 between those two groups falling into both categories.

6 THE CHAIRMAN: Right. At that point in
7 time.

8 Does anybody else wish to comment on
9 these matters?

10 Yes, sir?

11 MR. WIERZBICKI: I am a member of the
12 public and listening to this --

13 THE CHAIRMAN: Sir, could you please give
14 us your name?

15 MR. WIERZBICKI: Stefan Wierzbicki,
16 W-i-e-r-z-b-i-c-k-i.

17 Listening to these positions in the
18 hearing, it seems to me the Ministry of Environment is
19 eliminating him from the position of neutrality. He is
20 not neutral, in my opinion, if a regulator is -- a
21 regulator body is, in his ministry, responsible for the
22 environment.

23 However, in here, he has got the right to
24 be here and defend his position as Ministry of the
25 Environment and defend what he is concerned about. So

1 I think he should not be eliminated from participating
2 in this assembly.

3 THE CHAIRMAN: Well, they certainly, sir,
4 are not being eliminated from participating in these
5 proceedings. What we are trying to sort out is where,
6 in the proceedings, they will be adducing their
7 evidence and cross-examining.

8 What we are trying to ascertain is
9 whether or not they are going to follow Rule 47,
10 subsection (6) and Rule 48, subsection (6), or whether
11 they are going to be placed at another point in that
12 order of presenting evidence, and I think that's what
13 we are trying to resolve at this moment.

14 But, please, don't come away from what
15 you have just heard thinking that the Ministry of the
16 Environment will not be taking a part in these
17 proceedings nor taking, I suspect, positions on the
18 issues that come before us. They certainly will be
19 involved, I would suggest, from today right to the end
20 of the hearing.

21 MR. WIERZBICKI: Because, Mr. Chairman,
22 the environment is the most responsible thing for you
23 to think and take care of.

24 THE CHAIRMAN: Thank you.

25 Any further comments?

1 Mr. Williams?

2 MR. WILLIAMS: Mr. Chairman, after
3 listening to all of the observations made this
4 afternoon I think that it is becoming clear, that in
5 most instances, if not all, that the Ministry would
6 surely, during the proceedings on the different issues
7 as they emerge, fall into that category of either a 2
8 or a 4 and, at some point in time early in the
9 development of those issues they should be able to make
10 clear to your Board, and the parties, what position
11 they will take on those matters.

12 I think that the reports made by Mr.
13 Cosman are quite valid in that regard, and I think the
14 order of presenting them on that basis seems like a
15 reasonable proposal as well, given that they would fall
16 into those categories.

17 I would be hard pressed to find
18 situations where they would continue to be completely
19 neutral as a regulatory body to come under that
20 umbrella of category 6.

21 THE CHAIRMAN: So you are suggesting also
22 that they should come after the parties in support?

23 MR. WILLIAMS: I think they'll have to
24 fish for that bait at an appropriate point in time,
25 earlier rather than later in the submissions.

1 MR. CAMPBELL: Coming from the Anglers &
2 Hunters, I can...

3 MR. WILLIAMS: Mr. Chairman, if I can use
4 that term, I think it's an appropriate term for our
5 association to put it into that kind of context.

6 The one area that still does concern me,
7 and I would appreciate clarification, is the second
8 aspect of this which is the relationship of MOE to the
9 other regulatory agencies that they happen to be
10 involved with under the review process.

11 I know that document hasn't been
12 introduced in evidence at the moment, so I am not going
13 to refer to specific documents that were alluded to by
14 Mr. Hunter, but he had suggested in his comments that
15 the Directorate had somehow been prejudiced by the
16 position taken by the MOE, and yet what has transpired
17 as a result of the involvement of the Office of the
18 Native Affairs' Directorate would suggest that they, in
19 fact, have been very favourably disposed to the Native
20 Affairs, to the native people, which I think is
21 derogatory.

22 But, in any event, I think it must be
23 made clear as to what role, in fact, they do have to
24 play with each other, the ministries or their agencies,
25 and whether they are seen as being the mandate for

1 these agencies and leading them into the process, or
2 whether they are going to act independently.

3 Because I think, as you mentioned
4 earlier, that if they are going to be brought in, it
5 may be through introduction of evidence by one of the
6 other parties, in which case, it seems to me, the
7 obligation would be on that party to bring them in as
8 witnesses and not that of the Ministry of the
9 Environment.

10 And I don't see them playing a role as
11 leading those particular agencies into the process
12 under their wing or umbrella.

13 I just wanted to get that clear, whether
14 in fact that's your view, as a Board; if that's your
15 vision of it, as well, or whether I am misunderstanding
16 what the Board position is.

17 THE CHAIRMAN: Well, I am not a hundred
18 per cent clear on how the other agencies are going to
19 actually adduce their evidence, but I assume if one of
20 the other agencies wishes to testify before the Board,
21 they are going to produce witnesses to do so and Mr.
22 Campbell may not necessarily be the one that introduces
23 those witnesses.

24 MR. CAMPBELL: That's absolutely correct,
25 Mr. Chairman.

1 The point is that the only party that is
2 here now before you represented is the Ministry of the
3 Environment.

4 All of these other ministries; they are
5 not parties before you now, they may never be, or they
6 may be and I may or may not represent them.

7 For the moment, I am trying to make sure
8 they know what's going on. It is just a sensible
9 method of communication and making sure that if they
10 want to come in they can understand what is going on,
11 but I may not end up representing them if the interest
12 is sufficiently different.

13 THE CHAIRMAN: If you did represent them,
14 Mr. Campbell, and if the interest was not in conflict
15 of that of the Ministry of the Environment, I take it
16 that the order where those parties would fall into the
17 proceedings would be dependent on what their position
18 is?

19 MR. CAMPBELL: On what their position is?

20 THE CHAIRMAN: That's right.

21 MR. CAMPBELL: That's exactly right.

22 THE CHAIRMAN: You would playing two
23 roles wearing two different hats provided there was no
24 conflict; is that your understanding?

25 MR. CAMPBELL: Exactly. Just the way my

1 friend's firm is representing different clients. No
2 different than that, Mr. Chairman. They would be
3 completely separate and independent parties.

4 What we are talking about here is one
5 party, the Minister of the Environment, and I must say
6 that I take some comfort that the position we argue is
7 the correct one; that it can always be said for the
8 Minister of the Environment when he is taking flack
9 from all sides.

10 THE CHAIRMAN: Mr. Hunter?

11 MR. HUNTER: Our friend from Natural
12 Resources has remained silent, Mr. Chairman. Perhaps
13 can we have a view on this matter?

14 THE CHAIRMAN: Mr. Freidin?

15 MR. FREIDIN: Mr. Chairman...

16 THE CHAIRMAN: You know what your
17 position is, so you are not interested.

18 MR. FREIDIN: I am not going to comment
19 on the issue as between Mr. Hunter and Mr. Campbell,
20 but while I am just on my feet I would like to make
21 three points.

22 It is the understanding of my client that
23 it has in fact satisfied all significant concerns
24 expressed by the ministries of the Ontario government,
25 as expressed in the Government Review Document, and Mr.

1 Campbell, as he indicated, will be filing material to
2 support that position when he has assembled it all.

3 Secondly, I can't sit down without saying
4 that the Ministry of Natural Resources is just as
5 concerned about the environment as the Ministry of the
6 Environment and we will hopefully demonstrate that in
7 these hearings.

8 And, thirdly, I cannot -- I just would
9 like to keep the record down, but my client I can
10 assure you, takes offence from Mr. Hunter's suggestion
11 that my client, the Ministry of Natural Resources,
12 wrote the response of the Ministry of Northern
13 Development & Mines.

14 Thank you.

15 THE CHAIRMAN: Thank you, Mr. Freidin.

16 Well, ladies and gentlemen, is there
17 anybody else before we, I think, probably retire to
18 consider this one issue?

19 Mr. Hunter?

20 MR. HUNTER: I just ask one clarification
21 from my friend.

22 Firstly, I didn't say that MNR wrote the
23 Ministry of Mines & Northern Developments' position, I
24 said that they wrote the comment on the Ministry of
25 Mines & Northern Development's position as represented

1 here.

2 Secondly, did I understand you to say
3 that MNR has resolved all differences with all
4 ministries? Does that include ONAD; is that correct?

5 MR. FREIDIN: I understand there may be
6 some question about ONAD, but it is my understanding
7 that as of this morning, that those matters had been
8 resolved.

9 MR. HUNTER: Thank you.

10 MR. EDWARDS: Mr. Chairman, I am trying
11 not to stand up and I cannot take it any longer.

12 THE CHAIRMAN: Everyone gets a turn.

13 MR. EDWARDS: One brief comment. I
14 haven't heard anything yet which has given any
15 indication of prejudice from the Ministry of the
16 Environment if it did not go last, but I certainly
17 heard a number of parties take the position that they
18 would be prejudiced if the Ministry did go last.

19 The argument in favour of the Ministry's
20 position seems to be that the rule provides for it and
21 I haven't heard much more than that, and the rule just
22 says that parties may cross-examine as the Board may
23 direct in the absence of direction in that order.

24 THE CHAIRMAN: And the rule, by the way,
25 was specifically worded in that way so that it could

1 take account of a particular proceeding.

2 It was not meant that this order should
3 be carved in stone and it would be an abrogation of
4 this rule if the Board were to rule otherwise on it.

5 MR. EDWARDS: I think that is my point,
6 is that it in no way is carved in stone.

7 I think that the nature of this
8 proceeding is such that it is quite different from a
9 site-specific examination and clearly, in this case,
10 there will be some actual prejudice to some of the
11 smaller parties if the order is adhered to as if it was
12 on a stone tablet.

13 THE CHAIRMAN: Let us -- unless there is
14 further discussion from other parties who have not yet
15 spoken, let us end this with one more question to the
16 counsel for the Ministry of the Environment.

17 Mr. Campbell, does the Ministry take
18 objection to the possibility of you being the last to
19 call your evidence in support after the other parties,
20 and the first to call evidence in terms of those who
21 might be in opposition?

22 In other words, where is, in your view,
23 the prejudice if that were in fact to be the ruling of
24 the Board?

25 MR. CAMPBELL: Well, Mr. Chairman, first

1 of all, I really think it is inappropriate to say we
2 had have some dual role of the last in support of and
3 the first in opposition. If there is any alternative
4 that is going to be considered by the Board, it is that
5 we occupy some intermediate position between those two
6 groups. To me, that is the only reasonable alternative
7 following the thinking of the Board's order as set out
8 in its Rules.

9 I think the rationale for the Minister
10 appearing in the order in which I have recommended was
11 best explained by yourself. The whole rationale for
12 that last category has to do with parties like the
13 Minister of the Environment who bear wide, regulatory
14 responsibility, not just under this legislation, but
15 under a wide variety of environmental legislation.

16 And it is certainly, I think assuming -
17 as I do, as I always do - that all of the parties in
18 their own way, both through cross-examination and in
19 their own testimony, are going to be making
20 contributions to this hearing, are going to be raising
21 issues and putting forward positions on them, it is
22 prejudicial to a regulator, both to cross-examine or to
23 give its own testimony, in an order which means that
24 half of the people that are making suggestions about
25 how you regulate go before you and half of the people

1 who make suggestions about how you regulate go behind
2 you.

3 How can the Minister respond to all of
4 the myriad of suggestions that will be made either in
5 cross-examination or in direct testimony as to how this
6 matter should be regulated when it has only heard half
7 of it?

8 It will be unable to respond effectively
9 in any reasonable way to all of those people who are in
10 opposition who will be saying: You ought to be doing
11 it this way, you shouldn't be doing it that way.

12 THE CHAIRMAN: Well, it could respond in
13 reply; could it not, Mr. Campbell, if necessary? I
14 mean, if you heard something that came afterwards?

15 MR. CAMPBELL: Well, we are not the
16 proponent and I don't think it should automatically be
17 assumed that everyone here is going to consent to us
18 having the right of reply, Mr. Chairman.

19 THE CHAIRMAN: No, no they are not. But
20 what I am saying is: If there was severe prejudice
21 shown by reason that you were not in the order that you
22 are suggesting at the very end, I mean, there is a way
23 of sort of rectifying it with leave of the Board by
24 permitting something in reply, if necessary.

25 MR. CAMPBELL: I think the Board always

1 has the jurisdiction to do that for all parties. My
2 submission is that we just ought to avoid the problem
3 in the first place and put us in a sensible order right
4 off the bat.

5 To be perfectly frank about it, I have
6 not recognized, in all of the submissions that I have
7 heard, any suggestion by the Ministry of the
8 Environment coming in and putting forward in
9 cross-examination, testing the evidence in the way that
10 we propose to do, that anyone else will be prejudiced.
11 I have the not heard substantive arguments to support
12 that position.

13 I think, on the other hand, the
14 Ministry's position can be prejudiced because it will
15 be unable to respond to the very suggestions that were
16 made as to how it ought to be carrying out its
17 responsibilities.

18 And it is clear that the proponent, the
19 industry, other intervenors, Mr. Hunter's clients,
20 everybody sees the Ministry of the Environment as
21 having a continuing and long-term responsibility, not
22 only in relation to this hearing, but in relation to
23 the activity that will take place for Timber Management
24 in the future.

25 THE CHAIRMAN: Mr. Cosman, where would,

1 for instance, your client or a party in your client's
2 position, be prejudiced by the Ministry of the
3 Environment, as distinct from any other agency for
4 which Mr. Campbell might be also acting coming at the
5 end?

6 MR. COSMAN: Well, Mr. Chairman, the
7 situation is that, of course, he who goes last hears
8 what comes before and what comes before, if you -- what
9 you hear before you speak and before you decide to lead
10 evidence, affects how you are going to present your
11 case. And we do not have a right of reply either,
12 necessarily, unless the Board grants it to us.

13 And it may be that things are stated by
14 someone who is, I suggest, taking a very strong
15 stance - as they should - where we are going to be in
16 the position of not being able to respond.

17 My friend keeps talking about the
18 important regulatory role of the Minister; that is
19 clearly so, but we are now out of the baby book of the
20 Minister before a Board where the clear regulatory
21 authority rests in you, and in that respect, Mr.
22 Chairman, you have that responsibility.

23 My friend talks about testing the
24 evidence --

25 THE CHAIRMAN: I am not sure the

1 regulatory authority rests in us, Mr. Cosman.

2 MR. COSMAN: Not ultimately.

3 THE CHAIRMAN: The decision rests in us
4 at a particular point in time.

5 MR. COSMAN: Yes.

6 THE CHAIRMAN: We either approve the
7 application, reject it, or approve it with or without
8 conditions.

9 MR. COSMAN: Yes.

10 THE CHAIRMAN: As of that moment in time,
11 the mantle passes, I think, to somebody else, and I
12 would suggest it would be to the various government
13 agencies, certainly including the Ministry of the
14 Environment, that carries on the so-called "regulatory
15 role".

16 MR. COSMAN: Yes. On an on-going basis,
17 that is clear.

18 THE CHAIRMAN: On an on-going basis. And
19 that is why, frankly, we would put that Ministry in the
20 role of - to use the vernacular in the Act - a
21 regulator.

22 MR. COSMAN: It is a question that when
23 one talks about the interests of the Ministry there
24 are, as we all know in this room, thousands of jobs on
25 the line with respect to the proposal to come out or

1 may come out of this hearing.

2 Recommendations may be made or evidence
3 may be put by my friend at the end of the day when my
4 clients, who ultimately -- and their employees, who
5 ultimately will have to go and work with the Ministry
6 of Natural Resources, may be affected.

7 And surely -- I mean, I would love to go
8 last. I mean, everyone in this room would love to go
9 last.

10 THE CHAIRMAN: Not everyone, even if we
11 were to grant leave for reply, can go last, obviously.

12 MR. COSMAN: That is right and that is
13 why the rule -- that is why you have the rule, Mr.
14 Chairman.

15 THE CHAIRMAN: But I want to assure the
16 parties. I mean, if the order were such that the
17 Ministry did in fact go last, as contemplated by this
18 rule, the Board does view this particular undertaking
19 as somewhat different and somewhat unusual than that
20 which normally comes before the Board.

21 And it may be, under specific
22 circumstances, that certain rights of reply, as a
23 result of what the Ministry says or doesn't say, may
24 have to be granted.

25 I mean, I think the parties should be

1 assured that the Board is going to look very carefully
2 at the procedural aspects of this case and try and make
3 it fit into the type of undertaking this is, and the
4 fact that: It is a multi-locational hearing, the fact
5 that it is the first Class Environmental Assessment,
6 the fact that it is not necessarily project-specific or
7 site-specific.

8 And I think we are very much into
9 unchartered waters, if I might call it that, in terms
10 of procedure, and what is in the rules may not fit
11 exactly and the Board, I think, is quite prepared to
12 amend these rules as we go along to fit the
13 circumstances.

14 I think it would probably be advantageous
15 at this point to take a break so that the Board might
16 be able to consider what has been said for a few
17 moments.

18 Whether we will be able to come back
19 within, say, 15 minutes and give you our decision on
20 this particular point, I am not sure. We may wish to
21 consider it later on today as well and give a reply
22 first thing in the morning.

23 In any event, I think we will rise for a
24 break for about 15 minutes and come back and deal with
25 some other procedural matters.

1 ---Recess at 3:20 p.m.

2 ---Upon resuming at 3:50 p.m.

3 THE CHAIRMAN: Thank you, ladies and
4 gentlemen. Please be seated.

5 Ladies and gentlemen, the Board probably
6 could give a ruling on this issue right now, but in
7 fairness to all of the parties, I think we want an
8 additional opportunity over the evening to further
9 debate it amongst ourselves.

10 This is not the only place that matters
11 get debated. We certainly have discussions over what
12 we have heard and we want to weigh some of the
13 conflicting positions so that when we do give a
14 ruling - and I think we will come in tomorrow morning
15 with a ruling on the order as far as the Ministry of
16 the Environment is concerned - we will have had a full
17 opportunity to consider everything ,and I think we need
18 the evening for that purpose.

19 As far as other issues are concerned of a
20 preliminary nature, the Board does not propose, I think
21 at this stage of the game ,because I think it would be
22 somewhat premature to get into discussions concerning
23 the possibility of site visits.

24 I think it is a bit early, we have not
25 heard any evidence at all yet, and the Board will not

1 be conducting any site visits for at least a few weeks,
2 so that we will have an opportunity at some future date
3 to get into that specific question.

4 I would now like to ask if any counsel or
5 any other party to the proceeding wishes to raise any
6 matter of a procedural nature; if not, then it was the
7 Board's intention to allow each of the parties a short
8 period of time to make a brief opening statement.

9 Again, often the opening statements are
10 reserved to the parties for when they call their
11 evidence, or shortly before they call their evidence.
12 Because of the nature of this hearing, some parties
13 obviously will not be getting into a position of
14 calling their own evidence for several months.

15 I think it would be helpful to everybody
16 if parties wished to make a brief opening statement in
17 terms of their client's position on the application, we
18 would all have the benefit of knowing where they come
19 from in terms of their cross-examination and other
20 participation prior to when they call evidence on their
21 own.

22 So, firstly, I would like to ask whether
23 or not there is anybody who wishes to raise another
24 matter that the Board has not already covered on their
25 own, and then we will start in with some opening

1 statements.

2 MR. FREIDIN: Yes. Perhaps I could just
3 finish some of the filing that was started this
4 morning.

5 THE CHAIRMAN: Very well.

6 MR. FREIDIN: These are the tear sheets
7 in this box and the daily newspapers are on top as
8 sworn in the affidavit of service. (Handed)

9 THE CHAIRMAN: All right. And that was
10 Exhibit...?

11 MRS. BLASTORAH: It was Exhibit 3B.

12 THE CHAIRMAN: 3B, the affidavit of Tracy
13 Tieman.

14 MRS. BLASTORAH: Those tear sheets are
15 referred to in the affidavit.

16 THE CHAIRMAN: In that affidavit.
17 Thank you.

18 MR. FREIDIN: Perhaps while I am on my
19 feet, Mr. Chairman, I have a document here which is
20 eventually going to be marked as an exhibit, perhaps we
21 might just as well do it now, and that is the copy of
22 the Class Environmental Assessment Timber Management on
23 Crown Lands in Ontario, as Amended. (Handed)

24 THE CHAIRMAN: Thank you. This will be
25 Exhibit No. 4.

1 ---EXHIBIT NO. 4: Class Environmental Assessment
2 Timber Management on Crown Lands
 in Ontario, as Amended.

3 MR. FREIDIN: The other matter - perhaps
4 as a matter of clarification, Mr. Chairman - deals with
5 the procedural directives which were issued, and I
6 would ask that you refer to the section on
7 interrogatories and, in particular, the part on page 4,
8 and I'm looking at Section 3 which states that:

9 "Where a party or individual who intends
10 to participate in the proceedings wishes
11 to submit interrogatories with respect to
12 evidence addressed by another party at
13 the hearing, the following procedures
14 shall apply...."

15 And it indicates that the opportunity is given to
16 serve those interrogatories some time after the
17 evidence of that party is given.

18 And I was just concerned as to whether,
19 in fact, what was provided by this rule was giving
20 people who were not in attendance at the hearing and
21 had counsel who cross-examined, the right to ask these
22 further interrogatories.

23 THE CHAIRMAN: I am sorry, I am not
24 understanding your query entirely.

25 MR. FREIDIN: The rule states that:

1 "Where a party or individual who intends
2 to participate..."

3 THE CHAIRMAN: Right.

4 MR. FREIDIN: "...in the proceedings
5 wishes to submit interrogatories with
6 respect to evidence addressed by another
7 party at the hearing, the following
8 procedures shall apply:

9 (a) Within 30 days of the evidence
10 having been given at the hearing, copies
11 of the interrogatories shall be served
12 upon full-time parties to the
13 proceeding."

14 And as I was reading that, it gave the right to parties
15 or an individual, the right to submit interrogatories
16 in relation to the evidence after the evidence had been
17 submitted, or had been led.

18 THE CHAIRMAN: Yes.

19 MR. FREIDIN: And it would be my
20 understanding that that would be an opportunity that
21 would be given to parties or individuals who had not
22 exercised their right of cross-examination at the
23 hearing.

24 THE CHAIRMAN: All right. In other
25 words, this should not be utilized as a second form of

1 cross-examination.

2 MR. FREIDIN: Correct.

3 THE CHAIRMAN: If the party is at the
4 hearing, cross-examines, any questions they asked at
5 that point, they do not get a second chance to do so by
6 way of an interrogatory.

7 MR. FREIDIN: That's correct.

8 THE CHAIRMAN: I think that would be the
9 intention of the Board.

10 MR. FREIDIN: Thank you.

11 THE CHAIRMAN: This was really put in for
12 many of the parties who would not be here on a daily
13 basis. They would probably find out about the
14 evidence, in the first instance, through the
15 transcripts and then wish to submit some kind of
16 interrogatory based on that evidence.

17 MR. FREIDIN: And just one last matter,
18 Mr. Chairman, and this would be of assistance in
19 determining when witness statements should be served.

20 Can you advise whether there are any
21 changes to the dates on which the Board would be
22 sitting, changes from the information that we had about
23 a week ago?

24 THE CHAIRMAN: No., other than the two
25 days in that week in June - I think it is June 2nd and

1 3rd - we will not be sitting, and I think you were
2 notified of that about a week ago. There are no
3 further changes that I am aware of at this time, on
4 that initial schedule that we put out.

5 Okay. Are there any further procedural
6 matters?

7 Mr. Williams?

8 MR. WILLIAMS: Just one point, Mr.
9 Chairman, if I might which I discussed very briefly
10 with Mr. Freidin relative to the witnesses who would be
11 on the various witness panels.

12 Of course, the outline of evidence that
13 has been provided to all parties by the proponent is
14 most helpful to give us a clear understanding of where
15 the Ministry is going and the width and breadth
16 and the scope of their undertaking.

17 It would be even more helpful, of course,
18 Mr. Chairman, if with that resume of what the different
19 panels will be about, if we had some indication as to
20 the witnesses that would be called with regard to those
21 different panels.

22 I appreciate the logistics of the problem
23 are considerable, given the number of panels and the
24 length of the hearing and the broadness of the issues
25 but, nevertheless, it raised a question with Mr.

1 Freidin, because it seemed to me that if we knew the
2 number of witnesses and who the witnesses were that
3 would be associated with each of the panels, it would
4 give the parties a better appreciation of, perhaps, the
5 depth and the direction in which we are going -
6 and credentials of the various witnesses - and, in that
7 context, it would allow parties to understand to what
8 extent they should be cross-examining witnesses within
9 an earlier panel, or holding back until they could
10 better address the issue as they see it before another
11 panel, knowing who the witnesses would be in that
12 panel.

13 I mean, it is a logistical nightmare but,
14 nevertheless, I raise it as a point that would be
15 helpful to the parties as to where they were going.

16 THE CHAIRMAN: Well, Mr. Williams, I
17 don't know how the proponent can assist in that way,
18 but it would be helpful, I think, if - without
19 producing an additional witness statement - some kind
20 of very brief synopsis in that schedule, setting out a
21 little more information as to what the panel is going
22 to address and, if possible, who the witnesses are.

23 Because that would also accomplish one of
24 the Board's other stated aims; and that is, to allow
25 parties to decide whether or not they need

1 documentation with respect to a particular panel, and
2 in terms of the witness statements themselves.

3 And so, as a consequence, I do not know
4 if that is possible, Mr. Freidin, to put a little more
5 information into the outline than you presently
6 contemplate.

7 MR. FREIDIN: Well, I was hoping to add
8 that information -- expand a little bit on what is in
9 the outline in my opening remarks.

10 And I thought that -- again, I may take a
11 little longer than was suggested as being brief,
12 because I do want people to have an idea of who in fact
13 is coming on.

14 THE CHAIRMAN: Well, when I say being
15 brief, I think, sure; as far as the opening statements
16 are concerned, we do not want your whole case to come
17 in by way of your opening statement.

18 But, by the same token, I think in terms
19 of explaining what the undertaking is all about, the
20 opening statement should provide everybody with an
21 overview of what you are going to cover and what the
22 application is all about.

23 And I say that the other parties as well.
24 We do not want to spend two weeks on opening
25 statements, but some indication of the parties

1 of,riefly, what their interest is and what position
2 they will probably be taking in terms of the evidence
3 they will producing themselves.

4 But, in your case, I think perhaps a more
5 detailed explanation might help everybody out at the
6 outset.

7 Any other matters before we commencing
8 with an opening statement?

9 Mr. Williams?

10 MR. WILLIAMS: Just one further question,
11 Mr. Chairman.

12 I was just wondering whether as a logical
13 sequence, whether this document is going to be filed as
14 the next exhibit--

15 THE CHAIRMAN: The Review?

16 MR. WILLIAMS: --following the Class EA?

17 THE CHAIRMAN: Do you have any
18 objections, Mr. Freidin, to introduce the Review at
19 this time?

20 MR. WILLIAMS: The Review under the
21 Environmental Assessment Act seems to be the logical
22 next exhibit.

23 THE CHAIRMAN: Or, how about you, Mr.
24 Campbell?

25 MR. CAMPBELL: I have no objections to it

1 being given the next number, Mr. Chairman. I spoke
2 earlier of some of the continuing correspondence that
3 related to it.

4 THE CHAIRMAN: Do you want to put that in
5 at the same time?

6 MR. CAMPBELL: I would suggest that it
7 all ought to be given the same exhibit number. If you
8 wish to reserve the number, that's fine.

9 And I will provide that just as soon as I
10 have tidied up some of these odds and ends.

11 THE CHAIRMAN: All right. Why don't we
12 reserve the Exhibit No. 5 for the Review and we will
13 have it formally filed, together with all of the
14 supporting documentation that goes with it at the
15 appropriate time.

16 I am sure both of these documents will be
17 referred to very frequently throughout the proceedings,
18 and might as well have adjacent numbers for that
19 purpose.

20 ---EXHIBIT NO. 5: Government Review and supporting
21 (Reserved) documentation.

22 THE CHAIRMAN: Are there any additional
23 matters that anyone wishes to raise at this point in
24 time?

25 (No response)

1 Very well. Perhaps we could -- how long
2 do you anticipate, Mr. Freidin, your opening statement
3 to be; just as a rough guide? Do you have any idea?

4 MR. FREIDIN: One to two hours. one
5 hour.

6 THE CHAIRMAN: Don't let the Board
7 intimidate anyone at this stage of the game; we will
8 intimidate you later on after a few days have gone by.

9 MR. FREIDIN: Mr. Chairman, I am assuming
10 it would take -- I'm not sure how long the Board was
11 planning to sit today.

12 THE CHAIRMAN: Well, I am just
13 contemplating whether or not we should start the thing
14 first thing in the morning with your statement and try
15 and keep it together, rather than splitting it in the
16 middle, because in any event, I do not think today we
17 would be sitting beyond 4:30, quarter to five at the
18 most.

19 MR. FREIDIN: I was wondering whether it
20 would be possible for other -- you know, a good use
21 of the time, if other counsel who might have shorter
22 opening statements, if they are prepared to go ahead
23 and could do that beforehand, it might very well be
24 that my remarks tomorrow can, in fact, respond to or
25 identify where some of their concerns might be.

1 MR. CAMPBELL: He wants to go last.

2 THE CHAIRMAN: I suppose we could spend
3 the rest of the day arguing who is going to put in
4 their statement first.

5 Well, put it this way: Are there any
6 volunteers?

7 MR. BABCOCK: Mr. Chairman, I can't be
8 here tomorrow. I would certainly volunteer if nobody
9 else wants to use the time.

10 THE CHAIRMAN: All right. Well, we are
11 certainly willing to help out any volunteers as you can
12 see.

13 Very well. Do you want to commence?

14 MR. BABCOCK: Yes, thank you.

15 I represent the Red Lake-Ear Falls
16 Municipal Committee which is formed jointly by the
17 three municipalities of Red Lake, Ear Falls and Golden
18 which are in the extreme northwest corner of the
19 undertaking, northwest of Dryden.

20 The concern -- my clients generally
21 support the proposal in the sense that they support the
22 putting in place of a Timber Management Plan which will
23 expedite efficient, effective use of the forests,
24 protect the environmental concerns, including the
25 social, cultural and economic concerns of the area.

1 Specifically, the greatest weakness that
2 they see in the proposal - and the one area which we
3 will arguing which requires a specific amendment - is
4 greater input from the municipalities at an early stage
5 in the planning process.

6 In our view, the current proposal which
7 will invite municipal participation at the public
8 invitation stage does not allow sufficient time for
9 involvement of the municipalities in the actual
10 planning process.

11 And, in the view of my clients, the local
12 municipalities and their citizens are the primary
13 stakeholders in the forests of northwestern Ontario,
14 which are the principal areas of future forests
15 development.

16 It is, therefore, my clients' position -
17 which we will be putting forward - is that it is vital
18 that these stakeholders have an early opportunity to
19 participate in the planning process so that they can
20 accommodate planning for roads, sewers, services and
21 taxation and that their interests are greater than the
22 general public interests and, therefore, that the
23 proposal should be amended to reflect that interest.

24 The second position which my client will
25 put forward which generally supports the proposal is

1 that local land use is the appropriate approach to
2 Timber Management Planning in northwestern Ontario;
3 that is, tourism, parks, and forestry are compatible
4 uses of adjacent forest areas of different ages and
5 maturity and that through proper Timber Management
6 these various forest users can maximize the social,
7 cultural and economic benefits while still maintaining
8 protection of the environment.

9 Those are my clients' principal concerns
10 which we will be addressing both through limited
11 cross-examination and through evidence and argument at
12 the appropriate time.

13 THE CHAIRMAN: Thank you, Mr. Babcock.

14 Are there any other parties that might
15 wish to make an opening statement at this time?

16 (No response)

17 Everybody wants to hear from the
18 proponent first, I take it.

19 Very well, ladies and gentlemen. I think
20 at this point in time we might as well adjourn the
21 proceedings until tomorrow morning.

22 I believe that it would be in the
23 interests of everybody if we started the proceedings at
24 9:30 a.m. as opposed to 10:00 a.m. on the days when we
25 are here, as opposed to the days on which we are

1 travelling and will probably get a better use of the
2 day if we start a little bit earlier than ten o'clock.

3 Mr. Freidin?

4 MR. FREIDIN: Mr. Chairman, I have
5 limited copies of the outlines of evidence that I
6 handed out on January the 25th at the preliminaries.

7 I am assuming that a number of the people
8 here have still got that document.

9 THE CHAIRMAN: It is the same document;
10 is it not?

11 MR. FREIDIN: The same document. And for
12 most who do not have it, it might be useful to pick up
13 a copy tonight, pick it up right now while I have got
14 it, and I also have another document where I just
15 listed the panels that are to be called, the titles of
16 them.

17 I don't think anyone has got one of
18 those, but if you want one of those, come over here and
19 get one after the Board adjourns.

20 THE CHAIRMAN: Could we have one to take
21 with us tonight?

22 MR. FREIDIN: One?

23 THE CHAIRMAN: I think one of each would
24 probably be a good idea. One of our members here never
25 got one in the beginning.

1 MR. FREIDIN: (Handed)

2 THE CHAIRMAN: Thank you, ladies and
3 gentlemen. We will adjourn until 9:30 a.m.

4 ---Whereupon the hearing adjourned at 4:05 p.m., to
5 resume Wednesday, May 11, 1988, commencing at 9:30
6 a.m.

